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# A BILL FOR AN ACT

RELATING TO THE INGENUITY CHARTER.

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

- 1           SECTION 1. The legislature finds and declares that:
- 2           (1) Intellectual property is an essential source of
- 3           competitive advantage in the global economy;
- 4           (2) Inventors and other creators of intellectual property
- 5           are an important engine of sustainable economic
- 6           growth;
- 7           (3) Whether working independently or employed by
- 8           corporations, the vast majority of inventors and other
- 9           creators of intellectual property have neither the
- 10          collective representation, institutional strength, nor
- 11          the financial resources necessary to exercise and
- 12          enforce their property rights;
- 13          (4) Hawaii needs to attract inventors and to build its
- 14          reputation as a center of innovation to diversify and
- 15          strengthen its economy;
- 16          (5) Protecting labor and environmental standards in Hawaii
- 17          depends, in part, upon strengthening labor and



1 environmental standards both nationally and globally;  
2 and  
3 (6) Teaching innovation techniques in our schools is a  
4 wise investment in the State's future prosperity.

5 SECTION 2. The Hawaii Revised Statutes is amended by  
6 adding a new chapter to be appropriately designated and to read  
7 as follows:

8 "CHAPTER

9 INGENUITY CHARTER

10 § -1 **Definitions.** As used in this chapter, unless the  
11 context otherwise requires:

12 "Board" means the board of directors of the company.

13 "Company" means the ingenuity company.

14 "Inventor" means any creator of intellectual property whose  
15 work may result in the grant of a patent, copyright, trademark,  
16 or other type of intellectual property.

17 "Labor organization" means a formally organized association  
18 of workers who have united to represent their collective views  
19 on wages, hours, and working conditions.

20 "Pass through entity" means an entity that is not itself  
21 subject to tax, and where all applicable taxes are assessed to  
22 members of the entity, which report their distributive or pro



1 rata shares of the entity's income, gains, losses, deductions,  
2 and credits on their own tax returns.

3 § -2 Ingenuity company established; purpose. (a)

4 There is established the ingenuity company, which shall be a  
5 private, for profit, non-stock, limited liability company  
6 chartered by the State to:

7 (1) Acquire, invest in, license, use, and sell  
8 intellectual property and other property for the  
9 overall benefit of inventors, labor unions, and public  
10 educators;

11 (2) Enforce the intellectual property rights of inventors  
12 to encourage and reward innovation as well as to forge  
13 an anchor for good jobs in a manner that strengthens  
14 labor rights and enhances environmental protection  
15 nationally and internationally;

16 (3) Engage in any lawful business that is of potential  
17 benefit to inventors, labor unions, or public  
18 educators, including insuring intellectual property  
19 and investing in intellectual property;



- 1 (4) Promote Hawaii's role as a center of innovation;
- 2 (5) Support the teaching of innovation and its application
- 3 for the common good; and
- 4 (6) Use the right to exclude conferred by intellectual
- 5 property to raise global labor and environmental
- 6 standards.

7 § -3 **General powers of the company.** The company shall  
8 have the power to do any lawful acts or things reasonably  
9 necessary or desirable to carry out its purposes and protect the  
10 lawful rights and interests of its members in connection  
11 therewith.

12 § -4 **Membership classes.** There shall be five classes  
13 of company members:

- 14 (1) Educator members;
- 15 (2) Inventor members;
- 16 (3) Labor union members;
- 17 (4) Investor members; and
- 18 (5) The managing member.

19 § -5 **Member qualifications, selection, rights, and**  
20 **obligations.** (a) Educator members shall be appointed by the  
21 Hawaii State Teachers Association and the National Education  
22 Association, which shall each appoint one educator member to the



1 board. The appointment process for each position shall be  
2 determined by each organization.

3 Educator members shall be entitled to a sixty per cent  
4 share of the profits of the company after deducting expenses  
5 incurred by the company, including corporate management costs,  
6 managing member fees, intellectual property insurance, royalty  
7 payments to inventor members, and return payments to investor  
8 members. The sixty per cent share shall be divided equally  
9 between the two educator members. Each educator member shall  
10 allocate its share of the company's profits to support the  
11 teaching of innovation in a manner that is in compliance with  
12 the company's bylaws and policies as adopted by the board.

13 Educator membership shall only expire by act of the  
14 legislature.

15 (b) An inventor member may be a natural person or another  
16 entity. Inventor members shall enter into contracts with the  
17 company and one or more other members, and shall license,  
18 assign, or otherwise grant to the company rights to intellectual  
19 property on which the person or entity holds a patent,  
20 trademark, trade name, or copyright.

21 The Professional Inventors Alliance and the members of the  
22 National Inventors Hall of Fame shall each appoint an inventor



1 member to the board of the company. The appointment process  
2 shall be determined by each organization; provided that the  
3 National Inventors Hall of Fame shall provide its members with  
4 the opportunity to both nominate and vote on its representative  
5 to the board. Neither the Professional Inventors Alliance nor  
6 the National Inventors Hall of Fame shall be an inventor member.  
7 These inventor members shall have no voting rights in the  
8 company other than those granted by the Professional Inventors  
9 Alliance or the National Inventors Hall of Fame members. The  
10 managing member shall also appoint an inventor member.

11 An inventor's membership shall expire at the termination of  
12 a member's contract. If an inventor member is engaged in  
13 several contracts, membership expires at the end of the last  
14 contract.

15 (c) A labor union member shall be any labor organization  
16 that enters into a contract with the company, including any  
17 local, state, regional, national, or amalgamated body, and any  
18 national or international labor federation. The American  
19 Federation of Labor and Congress of Industrial Organizations,  
20 and Change to Win labor federation shall each appoint one member  
21 to the board. These labor union members shall have no voting  
22 rights in the company other than those granted by the American



1 Federation of Labor and Congress of Industrial Organizations,  
2 and the Change to Win labor federation. The managing member  
3 shall also appoint one labor union member to the board.

4 Labor union members shall enter into one or more contracts  
5 with and managed by the company. Each labor union member shall  
6 be entitled to a forty per cent share of the profits derived  
7 from contracts it is a party to, after deducting expenses  
8 incurred by the company, including corporate management costs,  
9 managing member fees, intellectual property insurance, and  
10 royalty payments to inventor members and return payments to  
11 investor members. These funds shall be expended by labor union  
12 members in a manner that is in compliance with the company's  
13 bylaws and policies as adopted by the board.

14 Labor union membership shall expire at the termination of a  
15 member's contract. If a labor union member is engaged in  
16 several contracts, membership expires at the end of the last  
17 member contract.

18 (d) An investor member may be a natural person or another  
19 entity. Investor members shall have no voting rights in the  
20 company. Investor members shall invest real, tangible, or  
21 intangible assets in the company by entering into an investment  
22 contract with the company. Investor members shall enter into



1 one or more contracts with and managed by the company to provide  
2 capital for the company or any of its members. In exchange for  
3 investing capital in the company or any of its members'  
4 contracts, investor members shall be entitled to investor return  
5 payments enumerated in its member contract. Investor return  
6 payments shall be paid out of contract returns after deducting  
7 expenses incurred by the company, including corporate management  
8 costs, managing member fees, intellectual property insurance,  
9 and royalties paid to inventor members before calculating  
10 profits to be allocated to labor union members and educator  
11 members.

12 Investor membership shall expire at the termination of an  
13 investor member's contract. If an investor member is engaged in  
14 several contracts, membership expires at the end of the last  
15 member contract.

16 (e) The managing member shall be a Hawaii domestic non-  
17 profit corporation that has the ability to perform the tasks  
18 necessary to carry out the purposes of this chapter on behalf of  
19 all of the corporation's member classes. The principal office  
20 of the managing member shall be located in the state. The  
21 majority of the members of the corporation's board shall be  
22 residents of Hawaii and a majority of the assets of the





1 corporation, including its real property and monetary holdings,  
2 shall be located within the state, or held by a financial or  
3 other institution or entity with a principal office located  
4 within the state. The managing member shall be selected by the  
5 president of the senate and the speaker of the house of  
6 representatives in consultation with the governor, within thirty  
7 days of the effective date of this Act.

8 The managing member shall appoint three members to the  
9 board of directors:

- 10 (1) One shall serve as the board chair;
- 11 (2) One shall be a labor member, representing a labor  
12 organization; and
- 13 (3) One shall be an inventor member who is an inventor or  
14 representative of an inventor's organization.

15 The managing member shall recruit new members and seek  
16 opportunities for members to contract with one another for  
17 mutual benefit. The managing member shall interpret the meaning  
18 of the company's member contracts when there is any dispute  
19 between members who are party to the member contract. Appeal  
20 from any interpretation may be made to the entire board. The  
21 directors may overturn the managing member's decision by a  
22 majority vote of the board.



1           The managing member may be removed and replaced by a  
2 majority vote of both houses of the legislature.

3           §     **-6 Membership meetings.** (a) There shall be an  
4 annual membership meeting held at a time to be determined by the  
5 board; provided that a membership meeting is held approximately  
6 every twelve months.

7           (b) The board shall create the means to permit members to  
8 participate from a distance by electronic or other means.

9           (c) The chair of the board and the chief executive officer  
10 shall present an annual report to the members on the company's  
11 affairs, including a financial report and a general description  
12 of the number and nature of the board's member contracts and how  
13 these contracts met the board's purposes.

14           (d) Special meetings of the members may be called any time  
15 by the chair of the board. The chair of the board shall call a  
16 special meeting of the membership at the written request of  
17 three directors upon a petition signed by at least fifty per  
18 cent of any class of members, or twenty-five per cent of all  
19 members.

20           §     **-7 Member's right to sue.** Members may sue the board  
21 for failure to conduct the business of the company in the best  
22 interests of all of the members or according to the purposes of



1 the charter. If the board has created an internal appeal  
2 process overseen by a neutral outside party, the right to sue  
3 shall only be available after exhaustion of the internal appeal  
4 process. Hawaii courts shall give the same deference to this  
5 internal process that they would give to any state agency  
6 administrative tribunal.

7       **§ -8 The board of directors.** (a) There shall be nine  
8 board members chosen by various constituencies pursuant to this  
9 chapter. The members shall be appointed in the following  
10 numbers by the following organizations:

- 11       (1) One member by the Hawaii State Teachers Association;
- 12       (2) One member by the National Education Association;
- 13       (3) One member by the Professional Inventors Alliance;
- 14       (4) One member by a vote of the members of the National  
15           Inventors Hall of Fame;
- 16       (5) One member by the American Federation of Labor and  
17           Congress of Industrial Organizations;
- 18       (6) One member by the Change to Win Labor Federation;
- 19       (7) Three members by the managing member, of which:
  - 20           (A) One member shall represent a labor organization;
  - 21           (B) One member shall be an inventor or represent an  
22           inventor's organization; and



1 (C) One member shall serve as the chair of the board  
2 of directors.

3 (b) In the event of the failure of an organization to  
4 appoint a member to the company under this section within sixty  
5 days of a written request by the managing member, the managing  
6 member shall appoint an acting board representative for that  
7 organization from among the constituency represented by the  
8 organization.

9 § -9 **Terms of office.** (a) Each member of the board  
10 shall be appointed for a term of five years; provided that the  
11 terms of members first appointed to the board shall be as  
12 follows:

13 (1) Two-year terms: the members appointed respectively by  
14 the Hawaii State Teachers Association, Change to Win,  
15 and the Professional Inventors Alliance;

16 (2) Three-year terms: the members appointed respectively  
17 by the American Federation of Labor and Congress of  
18 Industrial Organizations, National Education  
19 Association, and managing member to represent  
20 inventors;



1 (3) Four-year terms: the members appointed respectively  
2 by the National Inventors Hall of Fame and the  
3 managing member to represent labor; and

4 (4) Five-year term: the chair of the board.

5 (b) A board member may be recalled at any time without  
6 cause by formal action by the appointing body and replaced by  
7 another member who shall serve out the remainder of the former  
8 director's term. A member may serve any number of terms and may  
9 be removed from office for cause, by a vote of a majority of the  
10 remaining board members then in office.

11 § -10 Duties of the board of directors. (a) The board  
12 of directors shall:

13 (1) Elect all officers besides the chair, including a  
14 secretary, a treasurer, and one or more vice-chairs.

15 (2) Hire, fire, evaluate, and determine compensation for  
16 the chief executive officer;

17 (3) Determine policy for the company, operate the company  
18 to fulfill the purposes of this charter, and serve as  
19 fiduciaries in the best interests of all the members;

20 (4) Review company member contracts to ensure that they  
21 comply with the company's purpose, which may include



1 the creation of criteria for contract evaluation and  
2 delegation of the contract review function to staff;

3 (5) Hold an annual membership meeting; and

4 (6) Create and amend the company's bylaws to further the  
5 purposes of this charter.

6 § -11 **Board meetings.** (a) The board shall meet  
7 monthly, on the second Tuesday of the month, unless rescheduled  
8 by the chair of the board.

9 (b) Meetings may be held in any location convenient to the  
10 board or in multiple locations. Directors may participate in  
11 the meeting by any electronic or other method that allows each  
12 director to speak, hear, and be heard by all the others.

13 (c) Notice of any meeting may be waived by directors if a  
14 waiver is signed before, at, or after a meeting.

15 (d) Unanimous board action may be taken without a meeting;  
16 provided that all directors sign a resolution noting their  
17 agreement.

18 (e) Special meetings of the board may be called at any  
19 time by the chair, or by a notice signed by three directors.

20 (f) Special meetings of the board or company members shall  
21 be called by the chair upon a petition signed by at least twenty  
22 per cent of any class of members or ten per cent of all members.



1           §     **-12 Board member compensation.** A member of the board  
2 of directors shall not be paid more than the average annual  
3 compensation for the members of the Hawaii State Teachers  
4 Association, plus actual expenses incurred in carrying out the  
5 member's duties.

6           §     **-13 Executive committee.** The board of directors may  
7 delegate its duties to an executive committee made up of its  
8 officers. The executive committee may also act on behalf of the  
9 board when action is needed between meetings, subject to  
10 authorization or rescission at the next board meeting.

11          §     **-14 Officers.** (a) The officers of the board shall  
12 be elected by the board at its annual meeting.

13           (b) The chief executive officer may be hired on a contract  
14 exceeding one year if the board so chooses.

15           (c) The chief executive officer shall:

16           (1) Provide monthly reports to the board and annual  
17 reports to the members;

18           (2) Hire staff and consultants as necessary to carry out  
19 the purpose and business of the company; and

20           (3) Prepare an annual report on the company to the  
21 legislature and the department of commerce and  
22 consumer affairs.



1           The board of directors shall review and approve the annual  
2 report. The chief executive officer and the treasurer shall  
3 sign a statement attesting to the veracity of the information in  
4 the annual report provided to the legislature and the department  
5 of commerce and consumer affairs.

6           (d) The board shall designate a vice-chair to assume the  
7 duties of the chair whenever the chair is unavailable to chair a  
8 meeting or is otherwise incapacitated or unreachable.

9           (e) The secretary shall:

10           (1) Maintain all books and records of the company and be  
11 responsible for all required legal filings;

12           (2) Maintain accurate records of the current membership  
13 status of all current and past members; and

14           (3) Maintain records of the board members' staggered terms  
15 of office and provide notice to the board ninety days  
16 before each annual meeting of the terms that will  
17 expire at that annual meeting.

18           The secretary or the chair shall have the authority to sign  
19 contracts on behalf of the company.

20           (f) The treasurer shall:

21           (1) Maintain and oversee the financial records of the  
22 company;





- 1           (2) Make a financial report at every regular meeting of
- 2           the board and at the annual membership meeting; and
- 3           (3) Prepare the financial report that shall be included in
- 4           the annual report to the legislature and the
- 5           department of commerce and consumer affairs.

6           §     **-15 Taxation and distributions to members.**     The

7 company shall be organized as a limited liability company under

8 chapter 428. As a pass through entity, income of the company

9 and the company's distributions to members shall not be subject

10 to state tax. Distribution of the company's profits, property,

11 or assets to any member shall be reported on that member's tax

12 returns.

13          §     **-16 Disposition of assets.** Upon dissolution of the

14 company, assets shall be allocated as follows:

- 15          (1) Forty per cent to be divided equally between the
- 16                American Federation of Labor and Congress of
- 17                Industrial Organizations, and the Change to Win labor
- 18                federation to support strategic alliances between
- 19                labor unions and inventors; and
- 20          (2) The remaining sixty per cent to be divided equally
- 21                between the Hawaii State Teachers Association and the



1 National Education Association for allocation by them  
2 to programs teaching innovation.

3 § -17 Charter amendments. (a) Amendments to this  
4 charter shall be made by an Act of the legislature.

5 (b) The board may create and may amend bylaws to further  
6 elaborate the company's purpose, structure, and processes;  
7 provided that such bylaws do not conflict with this charter.

8 § -18 Duration. This corporate charter is perpetual  
9 unless rescinded by a two-thirds vote of both houses of the  
10 legislature.

11 § -19 Conflict of laws. If there is a conflict between  
12 this chapter and chapter 428, this chapter shall control. If  
13 this chapter is silent as to a matter addressed by chapter 428,  
14 chapter 428 shall control.

15 This chapter does not supersede any existing labor laws of  
16 the State. If there is any conflict between the two, the labor  
17 law shall prevail."

18 SECTION 3. There is appropriated out of the general  
19 revenues of the State of Hawaii the sum of \$ or so much  
20 thereof as may be necessary for fiscal year 2007-2008 and the  
21 same sum or so much thereof as may be necessary for fiscal year  
22 2008-2009 to capitalize the ingenuity company.



1 The sums appropriated shall be expended by the department  
2 of business, economic development, and tourism for the purposes  
3 of this Act.

4 SECTION 4. This Act shall take effect on July 1, 2007.  
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**Report Title:**

Ingenuity Charter

**Description:**

Establishes the Ingenuity Charter to facilitate the development of intellectual property, uphold high labor and environmental standards, and provide funds for instruction in the public schools that encourages innovation by Hawaii's students.

