

JAN 18 2008

SENATE RESOLUTION

ESTABLISHING A SENATE SPECIAL INVESTIGATIVE COMMITTEE TO CONDUCT AN INVESTIGATION OF THE AWARD OF A CONTRACT BY THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM TO H2 ENERGY LLC TO MANAGE THE HYDROGEN INVESTMENT CAPITAL SPECIAL FUND IN 2007, WHICH WAS SUBSEQUENTLY ORDERED TO BE RESCINDED.

1 WHEREAS, the hydrogen investment capital special fund,
2 section 211F-5.7, Hawaii Revised Statutes, was created by Act
3 240, Session Laws of Hawaii 2006, to provide seed capital for
4 and venture capital investments in private sector and federal
5 projects for research, development, testing, and implementation
6 of the Hawaii renewable energy program; and
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8 WHEREAS, the hydrogen investment capital special fund was
9 provided with an appropriation of \$10,000,000, pursuant to Act
10 240, Session Laws of Hawaii 2006, section 10, and was placed
11 under the jurisdiction of the Hawaii strategic development
12 corporation, chapter 211F, Hawaii Revised Statutes, which is
13 administratively attached to the Department of Business,
14 Economic Development, and Tourism; and
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16 WHEREAS, Act 240, Session Laws of Hawaii 2006, established
17 the Hawaii renewable hydrogen program, codified as section
18 196-10, Hawaii Revised Statutes, which relates to the hydrogen
19 investment capital special fund; and
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21 WHEREAS, the Department of Business, Economic Development,
22 and Tourism issued a request for proposals for potential
23 managers of the hydrogen capital investment special fund and
24 established an evaluation committee to review bids submitted and
25 to make a recommended on which bidder should be awarded the
26 contract; and
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28 WHEREAS, the evaluation committee reviewed submitted bids
29 and ranked three bidders, based on criteria established in the
30 request for proposals, from highest to lowest as follows: (1)
31 Kolohala Holdings LLP (score of 255); (2) Enterprise Honolulu
32 (score of 243); and (3) H2 Energy LLC (score of 234.5); and



1
2 WHEREAS, in August 2007, in spite of the evaluation
3 committee's recommendation, the Director of Business, Economic
4 Development, and Tourism selected an entity known as H2 Energy
5 LLC to manage the hydrogen investment capital special fund; and
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7 WHEREAS, H2 Energy LLC was the lowest ranking bidder for
8 the contract; and
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10 WHEREAS, the Senate Committee on Tourism and Government
11 Operations held an informational briefing on September 4, 2007,
12 to review the procurement procedures of the request for
13 proposals for the awarding of the contract that was awarded to
14 H2 Energy LLC; and
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16 WHEREAS, by letter dated September 25, 2007, the State
17 Procurement Office ordered the Director of Business, Economic
18 Development, and Tourism, who is the procurement officer of the
19 Department of Business, Economic Development, and Tourism, to
20 "rescind" the selection of H2 Energy LLC, based on its review of
21 the procurement process, which concluded that the contract
22 should have been awarded to the highest-ranking bidder based on
23 the internal evaluation committee's evaluation; and
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25 WHEREAS, the informational briefing, though resulting in
26 the rescinding of the selection of H2 Energy LLC, also uncovered
27 possible procurement improprieties that warrant legislative
28 investigation in order to determine whether administrative
29 malfeasance or misfeasance occurred and whether proposed
30 legislation is necessary thereto; and
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32 WHEREAS, there may be other contracts executed by the
33 Department of Business, Economic Development, and Tourism that
34 may have involved the same parties which may provide relevant
35 information concerning possible procurement improprieties; and
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37 WHEREAS, section 21-3, Hawaii Revised Statutes, authorizes
38 the establishment of a legislative investigative committee by a
39 single house resolution, and Rule 14(3) of the Rules of the
40 Senate allow for the establishment of special investigative
41 committees; now, therefore,
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1 BE IT RESOLVED by the Senate of the Twenty-fourth
2 Legislature of the State of Hawaii, Regular Session of 2008,
3 that there is established a Senate special investigative
4 committee, pursuant to chapter 21, Hawaii Revised Statutes, to:

- 5
6 (1) Investigate the selection of a manager for the
7 hydrogen investment capital special fund in 2007; and
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9 (2) Inquire into, gather, and analyze information,
10 including other contracts, that may provide relevant
11 information concerning procurement improprieties
12 relating to paragraph (1); and
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14 BE IT FURTHER RESOLVED that the Senate special
15 investigative committee to investigate the selection of a
16 manager for the hydrogen investment capital special fund shall
17 be chaired by the Vice Chair of the Senate Committee on Tourism
18 and Government Operations; and
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20 BE IT FURTHER RESOLVED that the membership of the Senate
21 special investigative committee to investigate the selection of
22 a manager for the hydrogen investment capital special fund be
23 composed of four members, including the Chair, to be appointed
24 by the President of the Senate; and
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26 BE IT FURTHER RESOLVED that the Senate special
27 investigative committee to investigate the selection of a
28 manager for the hydrogen investment capital special fund shall
29 have every power and function allowed to an investigating
30 committee by law, including without limitation the power to:
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- 32 (1) Adopt rules for the conduct of its proceedings;
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34 (2) Issue subpoenas requiring the attendance and testimony
35 of witnesses and subpoenas duces tecum requiring the
36 production of books, documents, records, papers, or
37 other evidence in any matter pending before the
38 investigative committee;
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40 (3) Hold hearings appropriate for the performance of its
41 duties, at such times and places as the investigative
42 committee determines;
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- 1 (4) Administer oaths and affirmations to witnesses at
- 2 hearings of the investigative committee;
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- 4 (5) Report or certify instances of contempt as provided in
- 5 section 21-14, Hawaii Revised Statutes;
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- 7 (6) Determine the means by which a record shall be made of
- 8 its proceedings in which testimony or other evidence
- 9 is demanded or adduced;
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- 11 (7) Provide for the submission, by a witness's own counsel
- 12 and counsel for another individual or entity about
- 13 whom the witness has devoted substantial or important
- 14 portions of the witness's testimony, of written
- 15 questions to be asked of the witness by the chair; and
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- 17 (8) Exercise all other powers specified under chapter 21,
- 18 Hawaii Revised Statutes, with respect to investigative
- 19 committees; and
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21 BE IT FURTHER RESOLVED that the Senate President from time
 22 to time, may refer to the Senate special investigative committee
 23 to investigate the selection of a manager for the hydrogen
 24 investment capital special fund specific matters that are within
 25 the scope of the investigative committee's jurisdiction; and

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 27 BE IT FURTHER RESOLVED that the Senate special
 28 investigative committee shall submit its written findings and
 29 recommendations to the Legislature prior to the convening of the
 30 Regular Session of 2009; and

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 32 BE IT FURTHER RESOLVED that certified copies of this
 33 Resolution be transmitted to the Governor, the President of the
 34 Senate, the Director of Business, Economic Development, and
 35 Tourism, and the Administrator of the State Procurement Office.

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 38 OFFERED BY: Anna Mercedes Kik

