

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT
AND BUSINESS CONCERNS
ON
HOUSE BILL NO. 2395

January 31, 2008

RELATING TO ECONOMIC DEVELOPMENT

House Bill No. 2395 establishes the Innovations and Inventions Revolving Fund, which would be administered by the Hawaii Innovation Development Corporation, to develop and exploit innovations and inventions that have direct economic benefits for Hawaii.

The revolving fund would be funded through legislative appropriations, grants from public or private sources, fees collected and proceeds from development and commercial exploitation of innovations and inventions. The bill appropriates an unspecified amount in general funds in FY 09 to be deposited into the revolving fund.

We do not support this bill. As a matter of general policy, this department does not support the creation of any special or revolving fund which does not meet the requirements of Sections 37-52.3 or 37-52.4 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether the fund will be self-sustaining.

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Economic Development & Business Concerns

From: Paul T. Tsukiyama, Director

Date: Thursday, January 31, 2008, 8:30am
State Capitol, Room 325

Re: Testimony on H.B. 2395
Relating to Economic Development

Thank you for the opportunity to submit testimony on H.B. 2395. The Office of Information Practices ("OIP") takes no position on the substance of this bill, but provides comment on two sections that affect part I of chapter 92, Hawaii Revised Statutes ("HRS") (the "Sunshine Law") and chapter 92F, HRS, the Uniform Information Practices Act (Modified) (the "UIPA").

§ -4 Meetings of the board.

Proposed section __-4 provides:

(a) The meetings of the board shall be open to the public as provided in chapter 92, except that the board may enter into an executive meeting that is closed to the public when it is necessary to receive or discuss proprietary information.

OIP has two comments. First, this section could be read to only require the board to comply with the open meeting requirements of the Sunshine Law. If the intent is that this board be subject to all provisions of chapter 92, OIP recommends that the language be amended as shown below. Second, the language seeking to allow the board to hold an executive meeting to receive or discuss proprietary information is

unnecessary in light of proposed section ___-8, discussed below, and ambiguous as to the meaning of “proprietary.”

OIP suggests that the following amendment together with the proposed amendment to section ___-8 below would more clearly effectuate the apparent intent of the bill:

§ -4 Meetings of the board. (a) The board shall be subject to chapter 92.

§ -8 Confidentiality.

OIP also offers the following comment on section ___-8, which states that the records described in that section “shall not be a government record”:

Notwithstanding any other law to the contrary, any documents or data made or received by any member or employee of the development corporation shall not be a government record to the extent that the material or data consists of trade secrets or other proprietary information.

“Government record” is a defined term under the UIPA that would apply to the records made or received under this section. Haw. Rev. Stat. § 92F-3 (1993).

OIP uniformly and strongly recommends against provisions in statutes outside of the UIPA that seek to exclude records from the UIPA’s definition of “government record.” OIP believes that, where the intent is to exempt certain records from disclosure, it is clearer and more appropriate to instead simply make the records “confidential.” Where a record is made confidential, it may be withheld from disclosure under an exception to the UIPA **and** it may be considered in an executive meeting, i.e., a closed meeting, under the Sunshine Law. See Haw. Rev. Stat. § 92F-13(4) (1993) (exception to disclosure provided for government records protected by statute from disclosure); Haw. Rev. Stat. § 92-5(a)(8) (exception to open meeting requirement provided to deliberate or decide a matter that requires

consideration of information that is confidential by law). OIP thus suggests the following amendment to proposed section __-8:

§ -8 Confidentiality. Notwithstanding any other law to the contrary, any documents or data made or received by any member or employee of the development corporation shall be confidential to the extent that the material or data consists of trade secrets or other proprietary information.

OIP further suggest that the committee consider adding a definition of “proprietary information” because it is subject to interpretation. The only statutory definition of that term appears in section 138-1, HRS related to enhanced 911 services for mobile phones, which reads as follows:

“Proprietary information” means customer lists and other related information (including the number of customers), technology descriptions, technical information, or trade secrets, and the actual or developmental costs of wireless enhanced 911 service that are developed, produced, or received internally by a wireless provider or by a provider’s employees, directors, officers, or agents.

Under the UIPA, agencies may, under section 92F-13(3), withhold from public disclosure information that constitutes trade secrets, proprietary information or confidential financial and business information. In the UIPA context, OIP generally construes the term “proprietary information” to include information that could be protected as intellectual property, such as by copyright or patent.

In summary, OIP believes that the proffered amendments would more clearly effectuate the apparent intent of the statute and would simplify application of the UIPA and Sunshine Law to the board’s maintenance and discussion of records containing trade secrets or other proprietary information. Further, OIP would recommend that a definition of “proprietary information” be included to make clear the extent of the information the legislature intends to protect.

Thank you for the opportunity to testify.

Professional Inventors Alliance

Washington, D.C. • (202) 318-1595 • www.PIAUSA.org

To: Rep. Kyle T. Yamashita, Chair
Rep. Glenn Wakai, Vice Chair
COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS CONCERNS

From: Ronald J Riley
Professional Inventors Alliance
Washington, D.C. 20006

Hearing Date: Thursday, January 31, 2008 at 8:30 am in Room 325

Support of HB 2395, Relating to Economic Development.

25 copies needed for submittal

My name is Ronald J Riley, President of the Professional Inventors Alliance (PIAUSA.org) located in Washington, D.C. and I want to thank you for the opportunity to comment on the proposed Ingenuity Company charter.

The Professional Inventors Alliance USA was created more than a decade ago to protect American invention and encourage innovation. American inventors saw a need to track legislation and policy that impacts independent inventors, small and medium-sized businesses and colleges and universities. The Alliance is the premiere organization in the nation providing independent inventors a united voice to improve public policy.

PIAUSA provides legislative counsel, congressional updates and strategy development to its members through a number of vehicles. Additionally, through its speaker's bureau, PIAUSA members have an opportunity to provide expert opinion to many of the nation's top-tier business, technology and mainstream media organizations. Over the years its members have testified before Congress, offered counsel to key Senate and House committee members and successfully pushed legislation to protect America's independent inventors.

Since its inception, the organization has grown into one of the most vocal advocates for America's patent system.

Today I am writing in support of the adoption of HB 2395, which establishes the Hawaii Innovation Development Corporation to promote the development and exploitation of innovations and inventions. The establishment of the HIDC could be of great benefit to inventors throughout the nation. Thank you for the opportunity to provide this testimony.

Testimony in support of House Bill 2395
Before the Committee on Economic Development & Business Concerns

Rep. Kyle T. Yamashita, Chair
Rep. Glenn Wakai, Vice Chair
Committee on Economic Development & Business Concerns

Hearing Date:
Thursday, January 31, 2008
8:30 am in Room 325

25 copies needed for submittal

Aloha Chairman Yamashita and Vice-Chair Wakai and member of the Committee,

My name is Ian Chan Hodges and for the past two years I have appeared before the legislature to provide testimony in support of creating an entity that would enable Hawaii to champion and support the rights of inventors. The entities that were proposed were designed to protect and exploit the patents of inventors with the understanding that patents can provide a very powerful tool for creating and retaining good jobs in a community faced with the stresses of competing in a global economy. You also received testimony from prominent inventors and top labor leaders from around the nation in support of those bills.

Twice in the past two years the legislature passed bill chartering the Ingenuity Corporation only to have the bill vetoed by the Governor. I want to thank you for your support in the past and I ask you to pass HB 2395, which has been drafted to address the concerns of the Governor.

Thank you for the opportunity to submit testimony.

UNITE HERE!

LOCAL 5 HAWAII

Eric Gill, Financial Secretary-Treasurer

Hernando Ramos Tan, President

Godfrey Maeshiro, Senior Vice-President

Wednesday, January 30, 2008

Representative Kyle T. Yamashita, Chair
Representative Glenn Wakai, Vice Chair
House Committee on Economic Development & Business Concerns

Supporting the intent of HB 2395; relating to the establishment of the Hawaii innovation development corporation.

Chair Yamashita, Vice Chair Wakai, members of the House Committee on Economic Development & Business Concerns, I submit this testimony on behalf of UNITE HERE! Local 5 – a local labor organization representing nearly 12,000 hotel and health care workers throughout our State.

If enacted, this bill would establish the Hawaii innovation development corporation—a unique alliance of inventors, unionized workers, and Hawaii’s educators—that would effectively strive to build and strengthen Hawaii’s middle-class by way of harnessing our collective strengths and talents.

As you know, here in Hawaii and through our Hawaii Hotel Workers Rising Campaign, UNITE HERE! Local 5 is at the forefront of ensuring that our State and our people take important steps towards securing middle-class jobs that provide good wages, affordable health care, and a strong voice on the job. In fact, as a member of Change to Win, a labor federation representing nearly 6 million members nationally and approximately 28,000 workers within the state of Hawaii, our central objective is to unite workers as a means for securing a Hawaii our children can afford to live in.

On behalf of our nearly 12,000 members statewide I thank you for allowing me to submit testimony that supports the intent of HB 2395.

Sincerely,



Cade M. Watanabe
Community/Political Organizer

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS CONCERNS
Thursday January 31, 2008
8:30 AM
State Capitol, Conference Room 325

In consideration of
HB 2395 RELATING TO ECONOMIC DEVELOPMENT.

Chair Yamashita, Vice Chair Wakai, and Members of the House Committee on Economic Development & Business Concerns.

The High Technology Development Corporation (HTDC) supports the concept behind HB 2395, however we question the need to create a separate state agency for such a narrow purpose which is “to promote the development and exploitation of innovations or inventions” by “any creator of intellectual property whose work may result in the grant of a patent, copyright, trademark, or other type of intellectual property.” This proposal also lacks important provisions such as confidentiality of trade secrets and the ability to copyright and license inventions. While we support an innovation-based economy, it is not clear how this proposal as written will support the intent to assist inventors and attract inventors to Hawaii.

Thank you for the opportunity to submit comments.