



## DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of

**THEODORE E. LIU**

**Director**

Department of Business, Economic Development, and Tourism

before the

**COMMITTEE ON WAYS AND MEANS**

March 28, 2008

9:30 A.M.

State Capitol, Conference Room 211

in consideration of

**HB 2395 HD1 SD1**

**RELATING TO ECONOMIC DEVELOPMENT.**

Chair Baker, Vice Chair Tsutsui, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the concept of innovation as the driving force for creating an economy that is based on human capital rather than natural resources. However, we do not support HB 2395 HD1 SD1, which would establish the Hawaii Innovation Development Corporation as an agency attached to DBEDT for administrative purposes.

This proposal is very similar to the Ingenuity Corporation which has been vetoed for the past two years. Although there have been some changes made in this new proposal, there continue to be concerns about the need for a separate organization focused specifically on this narrow issue and the ability of the proposed corporation to be self-sustaining. None of the testimony submitted by the proponents of the bill indicates any estimate for the potential benefit.

We suggest that before this bill is given further consideration, the proponents be requested to prepare a business plan that includes substantiated projections on the potential revenue that could be generated to support the activities of the corporation and its efforts to develop and exploit innovations and inventions to benefit the State.

Thank you for the opportunity to provide these comments.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
ON  
HOUSE BILL NO. 2395, H.D. 1, S.D. 1

March 28, 2008

RELATING TO ECONOMIC DEVELOPMENT

House Bill No. 2395, H.D. 1, S.D. 1, 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.

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.

In addition, we do not support creation of another State sponsored corporation to stimulate economic development. It is also unclear what actions the Innovative Development Corporation will undertake to benefit inventors, labor unions, and educators who are represented on the Board of Directors. The bill provides broad purposes for the Corporation and the officers; however, it does not provide specific actions the board or officers would take to accomplish its purposes.

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Ways and Means  
From: Paul T. Tsukiyama, Director  
Date: Friday, March 28, 2008, 9:30a.m.  
State Capitol, Room 211  
Re: Testimony on H.B. 2395, H.D. 1, S.D. 1  
Relating to Economic Development

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Thank you for the opportunity to submit testimony on H.B. 2395, H.D. 1, S.D. 1. The Office of Information Practices ("OIP") takes no position on the substance of this bill, but offers comment on two sections that could affect application of 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.

First, this section could be read to only require the board to comply with the meeting requirements of chapter 92. If the intent is that this board be subject to all provisions of chapter 92, any ambiguity may be prevented by amending the first clause to read: "The board shall be subject to chapter 92 . . . ."

Second, the language allowing the board to hold an executive meeting to receive or discuss proprietary information is unnecessary if the proposed section \_\_\_-8 is adopted, discussed below. OIP notes that proposed sections 4 and 8 appear to be inconsistent because section 8 would make trade secrets or other proprietary information confidential while section 4 makes discussion of that same information in a closed meeting discretionary. If the intent is to make that information confidential, OIP believes that the language in section 4 related to the discretionary executive meeting must be deleted. Under the Sunshine Law, boards may already enter into an executive meeting to consider information that is made confidential pursuant to state law. 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). However, if the intent is to allow, but not require, consideration of this type of information in an executive meeting, then proposed section 8 should be deleted.

**§ -8 Confidentiality.**

Section \_\_\_-8 provides confidentiality for trade secrets or other proprietary information by stating such information “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 broadly defined term under the UIPA that would apply to the information made or received under this section. Haw. Rev. Stat. § 92F-3 (1993). OIP uniformly and strongly recommends against statutory language that seeks to exclude specific records from that defined term.

If the legislature wants to protect completely “trade secrets or other proprietary information,” OIP believes it would be clearer and more appropriate, as

is generally done in other statutes, to provide that the information is “confidential.” Information made confidential by statute may be withheld from disclosure under a UIPA exception **and** may be considered in 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). If this is the committee’s intent, OIP suggests the following amendment:

**§ -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.

If the “proprietary information” is made confidential by statute, OIP suggests that the legislature consider defining the term “proprietary information” because it is often subject to interpretation. Under the UIPA, OIP generally construes the term “proprietary information” to include information that could be protected as intellectual property, such as by copyright or patent. See Haw. Rev. Stat. § 92F-13(3) (allows agencies to withhold from disclosure information that constitutes trade secrets, proprietary information or confidential financial and business information). Chapter 138, concerning enhanced 911 services for mobile phones, defines “proprietary information” for purposes of requiring confidentiality of that information under that chapter. Haw. Rev. Stat. § 138-1.

In summary, OIP believes that the proffered amendments would make the legislature’s intent clearer, would eliminate a conflict between the proposed sections, and would prevent ambiguity in application of the UIPA and Sunshine Law.

Thank you for the opportunity to testify.

# Professional Inventors Alliance

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To: Senator Rosalyn Baker, Chair  
Senator Shan Tsutsui, Vice Chair  
Committee on Ways & Means

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

Hearing Date: Friday, March 28, 2008 at 9:30 am in Room 211

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 legislation that would establish the Hawaii Innovation Development Corporation.

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 in Hawaii and throughout the nation. Thank you for the opportunity to provide this testimony.

**Testimony in support of House Bill 2395**  
Before the Committee on Ways & Means

Senator Rosalyn H. Baker, Chair  
Senator Shan S. Tsutsui, Vice Chair  
Committee on Ways and Means

Hearing Date:  
Friday, March 28, 2008  
9:30 am in Room 211

Aloha Chairman Baker and Vice-Chair Tsutsui and members 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. You also received testimony from prominent inventors and top labor leaders from around the nation in support of those bills. These proposed entities were designed to protect and utilize 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.

Twice in the past two years the legislature passed a 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.