



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2415, H.D. 1, S.D. 1, RELATING TO HIGH TECHNOLOGY.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

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**DATE:** Friday, March 28, 2008 **TIME:** 9:30 AM

**LOCATION:** State Capitol, Room 211  
*Deliver to: BY EMAIL to [senatetestimony@capitol.hawaii.gov](mailto:senatetestimony@capitol.hawaii.gov)*

**TESTIFIER(S):** WRITTEN TESTIMONY ONLY

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Deputy Attorney General, at 586-1180.)

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Chair Baker and Members of the Committee:

The Department of the Attorney General notes a constitutional concern and a drafting ambiguity in the new language added to this bill in S.D. 1.

Section 2 of this bill repeals chapter 206M, part IV, of the Hawaii Revised Statutes, thereby repealing the establishment of the High Technology Innovation Corporation. Section 3 of this bill terminates contractual obligations entered into by the High Technology Innovation Corporation. Although we are recommending as one alternative deletion of section 3 of this bill due to the constitutional issue discussed below, we also note that there is a problem with the wording of section 3 as well. The bill repeals part IV of chapter 206M, yet the provision addressing contractual obligations refers to the repeal of chapter 206M, thus creating an ambiguity as to the intent of this section.

Article I, section 10 of the United States Constitution provides that no state shall pass any law impairing the obligation of contracts. The United States Supreme Court has ruled when a state interferes with its own contractual obligations, the state's conduct must be examined under a heightened scrutiny. U.S. Trust Co. v. New Jersey, 431 U.S. 1, 20-21 (1977). Under the heightened scrutiny test, courts shall

consider, (1) whether the state law substantially impairs a contractual relationship; (2) whether the law is justified by a significant and legitimate public purpose; and (3) whether the impairment is both reasonable and necessary to fulfill the state's purpose. Matsuda v. City and County of Honolulu, 512 F.3d 1148, 1152 (9th Cir. 2008).

This bill appears to intend to abrogate the High Technology Innovation Corporation's contractual obligations upon its repeal, clearly and substantially impairing its existing contractual relationships. This bill does not set forth a significant and legitimate public purpose for the impairment, nor does it show that the impairment is reasonable and necessary to fulfill its public purpose.

Moreover, it has been held that a state cannot, consistent with the Contracts Clause, abolish a municipality without preserving to its creditors some effective means to collect debts owed to the creditors. City of Charleston v. Public Service Commission of West Virginia, 57 F.3d 385, 390 (4th Cir. 1995), cert. denied, 516 U.S. 974 (1995).

We therefore believe that with respect to contracts between the High Technology Innovation Corporation and private parties, section 3 of this bill would be subject to a constitutional challenge under the Contracts Clause of the United States Constitution.

With respect to contracts between the High Technology Innovation Corporation and other agencies of the State of Hawaii, however, it has been held that a political subdivision cannot assert that its creator state violated the Contracts Clause by impairing a contract between the subdivision and the state. Id. This is based on the premise that a political subdivision exists only by virtue of the exercise of the power of the state, and the state may at any time terminate the existence of the subdivision. Therefore, with respect to contracts between two state agencies, it would appear by analogy that neither agency-party to the contract could claim a violation of the Contracts Clause against the State.

We respectfully recommend your Committee delete section 3 of this bill, or in the alternative, limit the application of section 3 to

contracts solely between the High Technology Innovation Corporation and the State of Hawaii or instrumentalities of the State of Hawaii. In addition, we recommend inserting additional wording providing an entity that shall administer any remaining contracts of the High Technology Innovation Corporation following its repeal.