

HB 2825 HD1



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2825, H.D. 1, RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST SOPOGY, INC., IN THE DEVELOPMENT OF RENEWABLE ENERGY ON THE ISLAND OF OAHU.

BEFORE THE:

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

DATE: Tuesday, March 18, 2008 **TIME:** 3:15 PM

LOCATION: State Capitol, Room 414
Deliver to: Committee Clerk, Room 208, 1 Copy

TESTIFIER(S): Mark J. Bennett, Attorney General
or Brian Aburano, Deputy Attorney General

Chair Menor and Members of the Committee:

The Attorney General has comments regarding whether the special purpose revenue bonds proposed by this bill would be tax-exempt under current federal tax laws and would qualify for issuance under part VI, chapter 39A, Hawaii Revised Statutes (HRS).

This bill is to authorize the issuance of special purpose revenue bonds under part VI, chapter 39A, HRS, in a total amount not to exceed \$35,000,000, for the purpose of assisting Sopogy, Inc. with the planning, designing, construction, equipping, and operating of a solar farm power plant on the island of Oahu.

Generally, the purpose of issuing special purpose revenue bonds is to issue tax-exempt bonds, i.e., bonds that will pay interest that is exempt from federal income taxes. Tax-exempt bonds have lower interest rates than taxable bonds or commercial loans since they produce interest that is exempt from federal taxation. As outlined below, current federal tax laws will make it difficult for the special purpose revenue bonds proposed by this bill to be tax-exempt bonds.

Tax-exempt bonds may be issued under 26 U.S.C. § 142(a)(8) so long as 95 percent or more of the net proceeds of the bonds are used to provide "facilities for the local furnishing of electrical energy or

gas." However, this provision is limited to entities that were engaged in the furnishing of electrical energy or gas on January 1, 1997, and the proposed facility must serve the area served by that entity on January 1, 1997. See 26 U.S.C. § 142(f)(3). Sopogy, Inc. would not qualify to issue tax-exempt bonds under this provision, because it was not furnishing electrical energy in Oahu on January 1, 1997.

Tax-exempt bonds may be issued under 26 U.S.C. § 144(a) if they are "qualified small issue bonds." Bonds issued after December 31, 1986, do not qualify as "qualified small issue bonds" unless 95 percent of the net proceeds of those bonds are used to provide a "manufacturing facility" or farm property. See 26 U.S.C. § 144(a)(12)(A) and (B). A "manufacturing facility" is defined as a facility used "in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property)." See 26 U.S.C. § 144(a)(12)(C). Sopogy, Inc.'s proposed solar farm power plant would not qualify as a "manufacturing facility" as the production of electrical energy is not the production or manufacture of tangible personal property. Further, the amount of the proposed bonds exceeds the amount that is allowed for small issue bonds. See 26 U.S.C. § 144(a)(1) and (4) (\$1,000,000 and optional \$10,000,000 limit).

Tax-exempt bonds may be issued under 26 U.S.C. § 145(a) if all property to be provided by the net proceeds of the bonds is to be owned by a 501(c)(3) organization, i.e., a nonprofit organization under 26 U.S.C. § 501(c)(3). The records of the Department of Commerce and Consumer Affairs do not indicate that Sopogy, Inc. is a nonprofit organization. Rather, they indicate that it is a foreign profit corporation. As such, the bonds to be issued under this bill would not appear to qualify as tax-exempt bonds under 26 U.S.C. § 145(a).

While not tax-exempt, the proposed bonds could receive favorable tax treatment if they qualify as "clean renewable energy bonds" (CREB) under 26 U.S.C. § 54. However, the borrower who uses the proceeds of CREB special purpose revenue bonds must be a mutual or cooperative

electric company, i.e., a nonprofit organization organized under 26 U.S.C. § 501(c)(12) or 1381(a)(2)(C). See 26 U.S.C. § 54(d)(1)(B) and (j)(5). Sopogy, Inc. does not appear to be such a company. The bonds proposed by this bill also may not meet other requirements for CREB bonds set out in 26 U.S.C. § 54, including a current requirement that the bonds be issued before December 31, 2008. See 26 U.S.C. § 54(m).

Finally, it should be noted that special purpose revenue bonds under part VI, chapter 39A, HRS, must be for an "energy project." In order to qualify as an "energy project," the facilities for the project must be certified by the Public Utilities Commission as being for the local furnishing of electric energy or gas. See HRS § 39A-191(2).

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
ON
HOUSE BILL NO. 2825, H.D. 1

March 18, 2008

RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO
ASSIST SOPOGY INC. IN THE DEVELOPMENT OF RENEWABLE ENERGY ON
THE ISLAND OF OAHU

House Bill No. 2825, H.D. 1, authorizes the issuance of special purpose revenue bonds to assist Sopogy, Inc., to finance the planning, designing, construction, equipping, and operating of Sopogy, Inc.'s solar farm power plant on the island of Oahu.

The Department has a comment on this bill.

House Bill No. 2825 H.D. 1 authorizes the issuance of the special purpose revenue bonds for Sopogy, Inc. pursuant to Part VI, Chapter 39A, Hawaii Revised Statutes (HRS), entitled "Assisting Utilities Serving the General Public in Providing Electric Energy or Gas". We would like to point out that pursuant to Act 229, Session Laws of Hawaii 2007, Sopogy, Inc. has an existing \$10 million authorization to issue special purpose revenue bonds under Part V, Chapter 39 A, HRS, entitled "Assisting Industrial Enterprises".

The Department recommends that Sopogy, Inc. seek appropriate legal guidance to determine whether the proposed activity and facility qualifies for financing under Part V, Chapter 39A, HRS or Part VI, Chapter 39A, HRS.

HAWAII RENEWABLE ENERGY ALLIANCE

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Cully Judd
Inter Island Solar Supply

Herbert M. (Monty) Richards
Kahua Ranch Ltd.

TESTIMONY OF WARREN BOLLMEIER ON BEHALF OF THE HAWAII RENEWABLE ENERGY ALLIANCE BEFORE THE SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

HB 2825 HD1, RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS TO ASSIST SOPOGY INC. IN THE DEVELOPMENT OF RENEWABLE ENERGY

March 18, 2008

Chair Menor, Vice-Chair Hooser and members of the Committee, I am Warren Bollmeier, testifying on behalf of the Hawaii Renewable Energy Alliance (HREA). HREA is a nonprofit corporation in Hawaii, established in 1995 by a group of individuals and organizations concerned about the energy future of Hawaii. HREA's mission is to support, through education and advocacy, the use of renewables for a sustainable, energy-efficient, environmentally-friendly, economically-sound future for Hawaii. One of HREA's goals is to support appropriate policy changes in state and local government, the Public Utilities Commission and the electric utilities to encourage increased use of renewables in Hawaii.

The purpose of HB 2825 HD1 is to authorize issuance of special purpose revenue bonds in an amount not exceeding \$35,000,000 to assist Sopogy Inc. with planning, designing, construction, equipping, and operating a solar farm power plant on the island of Oahu to produce electricity from solar power. HREA **supports this measure** and offers the following comments in support:

- (1) Sopogy Inc. is currently developing a solar power plant to be located at NELHA near Kona on the Big Island to generate 1 MW of electricity for export to HELCO and possibly for meeting power needs at NELHA. Sopogy's technology includes the integration of an array of concentrating solar collectors (parabolic dish troughs) to produce steam to power turbine-generators. The Sopogy technology could also incorporate thermal storage to "firm" up power delivery to the grid for up to several hours after sunset; and
- (2) Potential Sopogy Project Benefits. Sopogy is currently evaluating projects sites and facility size on Oahu. However, as an example of what a potential facility could provide HECO in the way of solar electricity to help HECO meet their RPS requirements, HREA estimates that a 10 MW system could potentially be operated up to 40% to 60% capacity factor, resulting in delivery of 35,040 MWhs to 52,560 MWhs of electricity per year and save 58,400 to 87,600 barrels of oil per year.

Thank you for this opportunity to testify.

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
Tuesday March 18, 2008
3:15 PM
State Capitol, Conference Room 414

In consideration of
**HB 2825 HD1 RELATING TO THE ISSUANCE OF SPECIAL PURPOSE REVENUE
BONDS TO ASSIST SOPOGY INC., IN THE DEVELOPMENT OF RENEWABLE
ENERGY ON THE ISLAND OF OAHU.**

Chair Menor, Vice Chair Hooser, and Members of the Senate Committee on Energy and
Environment.

The High Technology Development Corporation (HTDC) supports HB 2825 HD1 which
authorizes Special Purpose Revenue Bonds in an amount not exceeding \$35,000,000 to assist
Sopogy, Inc. with planning, designing, construction, equipping, and operating a solar farm power
plant on the island of Oahu to produce electricity from solar power.

Thank you for this opportunity to submit testimony in support.



**To: Senator Menor, Chair
Committee on Energy and Environment**

From: Sopogy, Inc.

Date: March 18, 2008

Subject: Support for HB 2825 HD1 - Relating to the issuance of Special Purpose Revenue Bonds to assist Sopogy, Inc., in the development of renewable energy on the Island of Oahu.

Chair Menor, Vice-Chair Hooser, and Members of the Committee:

Sopogy, Inc. (Sopogy) is a solar power technology company based in Hawaii. Our purpose is to bring renewable solar energy technologies to Hawaii and its people for the betterment of our environment, reduce our independence from volatile imported fossil fuels, and provide a reliable renewable energy source for Hawaii.

Energy demand on Oahu is the highest in the State, therefore the need for a renewable energy plant on Oahu will continue to rise. Sopogy supports the intent of HB 2825 in that it would allow Sopogy to utilize a lower cost of capital to build and construct a multi-megawatt renewable power plant on Oahu utilizing our patent pending concentrated solar power technology. Such large scale projects are essential for the state to meet its aggressive goal of 70% renewable energy by 2030.

We support the purpose of HB 2825 and request the HD1 amended version be adopted. Based upon the current language of HB 2825, Sopogy would not be able to issue the full \$35 million under the rules and regulations of part V, chapter 39A, Hawaii Revised Statutes. Our proposed amendment request authorization for our bonds under part VI, chapter 39A, Hawaii Revised Statutes, which will exempt us from the lower issuance limit set forth in part V, chapter 39A, Hawaii Revised Statutes.

In general, Sopogy supports the adoption of renewable energy and energy efficiency measures that lessen the state's dependence on oil, reduce greenhouse gas emissions, and provide energy price stability to Hawaii's consumers.

Thank you for this opportunity to testify.



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