

**HB 2962 HD1**

**EDT**



Testimony of

**Hawaii Council of Mayors**

Bernard Carvalho, Jr., Mayor of Kauai County  
 Mufi Hannemann, Mayor of the City and County of Honolulu  
 William P. Kenoi, Mayor of Hawaii County  
 Charmaine Tavares, Mayor of Maui County

Before a Hearing of the  
**Senate Committee on Economic Development and Technology**

March 12, 2010

**House Bill 2962, HD 1, Relating to Taxation**

The Hawaii Council of Mayors (HCOM) supports the Legislature's efforts to review and consider all avenues for revenue stabilization and enhancement, including HB 2962, HD 1.

Like the State, the four counties are suffering the consequences of a stalled economy. The lowered tourism numbers, along with the collapse of the financial and housing markets not only have resulted in higher unemployment, but have affected real property sales and values, the underpinning for our county revenue stream. The resultant budget shortfalls have been excruciatingly painful to deal with. We all have applied widespread restrictions on spending, eliminated funding for positions, and executed specific programmatic cuts. We have reviewed our fees and fares structure, along with real property tax rates. And, we will be proposing furloughs for employees next fiscal year.



Mayor Billy Kenoi  
 County of Hawaii  
 25 Aupuni Street  
 Hilo, Hawaii 96720



Mayor Mufi Hannemann  
 City and County of Honolulu  
 590 South King Street  
 Honolulu, Hawaii 96813



Mayor Bernard Carvalho, Jr.  
 County of Kauai  
 4444 Rice Street, Suite 235  
 Lihue, Hawaii 96766



Mayor Charmaine Tavares  
 County of Maui  
 200 South High Street, 9th Floor  
 Wailuku, Hawaii 96793

We empathize with the State's financial plight and fully comprehend the magnitude of the State's financial challenges. As we counties have done, we recognize the Legislature's need to consider everything on the table in balancing the budget. And, we would hope the State Administration can appreciate why it is important for the Legislature not to summarily dismiss all options.

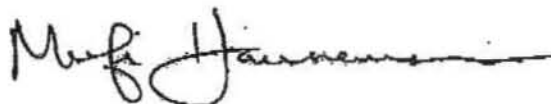
Given these considerations, HCOM believes it important for the Legislature to continue to review and consider all legislative options to stabilize and enhance revenues and balance the State budget, including HB 2962, HD1.

Mahalo.

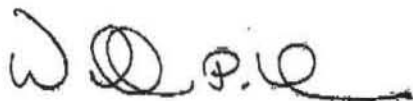
Aloha,



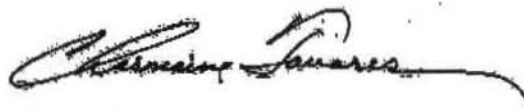
Bernard P. Carvalho, Jr.  
Mayor of Kauai



Mufi Hannemann  
Mayor of Honolulu

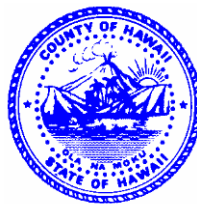


William P. Keno  
Mayor of Hawaii



Charmaine Tavares  
Mayor of Maui

DENNIS "FRESH" ONISHI  
Council Member  
District 4



PHONE: (808) 961-8396  
FAX: (808) 961-8912  
EMAIL: [donishi@co.hawaii.hi.us](mailto:donishi@co.hawaii.hi.us)

## HAWAI'I COUNTY COUNCIL

Mailing Address: 25 Aupuni Street, Hilo, Hawai'i 96720

March 10, 2010

TESTIMONY OF DENNIS "FRESH" ONISHI  
HAWAI'I COUNTY COUNCIL MEMBER  
ON

HB. NO. 2867, HD1, RELATING TO TAXATION  
HB. NO. 2962, HD1, RELATING TO TAXATION  
HB. NO. 2984, HD2, RELATING TO TAX CREDITS

Senate Committee on Economic Development and Technology  
March 12, 2010 1:30 p.m.  
Conference Room 016

Dear Chair Fukunaga, Vice-Chair Baker and Members of the Senate Committee on Economic Development and Technology:

Thank you for the opportunity to provide testimony on the above Bills.

HB No. 2867, HD1 imposes a temporary tax ceiling for certain tax credits, and reduces certain allowable tax credits for taxable years beginning on or after January 1, 2010 and ending before January 1, 2012.

HB No. 2962, HD1, temporarily disallows tax liabilities from being reduced by credits under the Technology Infrastructure Renovation Tax Credit and High Technology Business investment Tax Credit, beginning on July 1,

HB No. 2984, HD2 extends the tax credit for research activities for one year and repeals remaining tax credit provisions of Act 221, Session Laws of Hawai'i 2001, effective July 1, 2020.

The State as well as the Counties face a severe budget crisis. Hard decisions must be made and measures taken to alleviate this. We have all cut spending, eliminated positions and cut programs. Fees, fares and real property tax rates are being reviewed, and employees will be furloughed. HD No. 2867, HD1 and HB No. 2962, HD1 are temporary measures, and the state needs revenue to support operations.

Consequently, I believe it is important the Legislature be given the opportunity to consider all options, including the aforementioned Bills.

Once again, thank you for the opportunity to submit testimony on this matter.

**J YOSHIMOTO**  
*Chair & Presiding Officer*  
*Council District 3*



Phone: (808) 961-8272  
Fax: (808) 961-8912  
Email: jyoshimoto@co.hawaii.hi.us

## HAWAII COUNTY COUNCIL

*County of Hawai'i*  
*Hawai'i County Building*  
*25 Aupuni Street, Suite 1402*  
*Hilo, Hawai'i 96720*

March 11, 2010

The Honorable Carol Fukunaga, Chair and Members  
Senate Committee on Economic Development and Technology  
Twenty-Fifth Legislature  
State Capitol  
Honolulu, Hawaii 96813

**RE: HB 2867, HD1 Relating to Taxation**

**RE: HB 2962, HD1 Relating to Taxation**

**RE: HB 2877, HD1 Relating to Taxation**

Dear Chairs Fukunaga and Baker and Committee Members:

Thank you for the opportunity to testify in support of the Legislature's efforts to review and consider all avenues for revenue stabilization and enhancement, including: HB 2867, HD1; HB 2962, HD1; and HB 2877, HD1. I am testifying in my capacity as an individual Hawai'i County Council Member; the current County Council, as a body, has not taken any position on this matter.

Like the State, our County is suffering the consequences of a stalled economy. The lowered tourism numbers, along with the collapse of the financial and housing markets not only have resulted in higher unemployment, but have affected real property sales and values, the underpinning for our county revenue stream. The resultant budget shortfalls have been excruciatingly painful to deal with. We have applied widespread restrictions on spending, eliminated funding for positions, and executed specific programmatic cuts. We have reviewed our fees and fares structure and are raising our real property tax rates. In addition, we will be furloughing our employees.

I empathize with the State's financial plight and fully comprehend the magnitude of the State's financial challenges. As I have done, I recognize the Legislature's need to consider everything on the table in balancing the budget. I would hope the State Administration can appreciate why it is important for the Legislature not to summarily dismiss all options.

**J YOSHIMOTO**  
*Chair & Presiding Officer*  
*Council District 3*



Phone: (808) 961-8272  
Fax: (808) 961-8912  
Email: [jyoshimoto@co.hawaii.hi.us](mailto:jyoshimoto@co.hawaii.hi.us)

## HAWAI'I COUNTY COUNCIL

*County of Hawai'i*  
*Hawai'i County Building*  
*25 Aupuni Street, Suite 1402*  
*Hilo, Hawai'i 96720*

Given these considerations, I believe it is important for the Legislature to continue to review and consider all legislative options to stabilize and enhance revenues and balance the State budget, including: HB 2867, HD1; HB 2962, HD1; and HB 2877, HD1.

Sincerely,

J Yoshimoto, Council Chair  
Hawai'i County Council  
JY/so

## fukunaga3 - Doris

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 09, 2010 3:05 PM  
**To:** EDTTestimony  
**Cc:** rick@nova-sol.com  
**Subject:** Testimony for HB2962 on 3/12/2010 1:30:00 PM

Testimony for EDT 3/12/2010 1:30:00 PM HB2962

Conference room: 016  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Rick Holasek  
Organization: NovaSol  
Address: 1001 Bishop St., suite 2950 Honolulu, HI  
Phone: 808.441.3666  
E-mail: [rick@nova-sol.com](mailto:rick@nova-sol.com)  
Submitted on: 3/9/2010

Comments:

Bill: HB 2962 HD1

Date: March 12, 2010

Time: 1:30pm

Place: Room 312

Committee: EDT

Chair: Senator Fukuknaga

Vice Chair: Senator Baker

### **I oppose this bill**

Aloha Chair, Vice Chair, and Members of the Committee,

My name is Mike Curtis and I run a local software development company called SDC Hawaii, LLC. We employ seven people, five of whom are software designers and developers. We are a start-up company funded and owned by local investors and members of our own employee team.

This bill deferring use of the high technology business investment tax credit will result in irreparable harm to my company's investors, the company itself, and my employee partners. It will also result in further damage to our state's reputation as a stable place to do business.

Beyond the damage done, I question whether any fiscal benefit will be gained as a result of the bill. Any potential tax revenue increase anticipated from deferring these tax credits could be delayed or possibly even wiped out by lawsuits filed by investors as a result of the bills retroactive application. The retroactive nature of the bill will likely be very damaging to investors (companies and individuals). Investors who have made Act 221 investments have done their tax planning based on such investments. Deferral would effectively require these investors to make double payment (the investment and the tax). Many investors may not be able to cope with such a burden, especially given the current economic situation. Companies in this situation will likely lay-off employees in an attempt to make ends meet (as we did in the wake of last year's changes to the law).

In closing, I want to share with you the impact that your decision on this bill will likely have on our company. Right now our business plan calls for us to add five employees each year for the foreseeable future, with our employees (mostly software engineers) continuing to earn an average of roughly \$75,000 annually. Our capital structure has been designed for local investors based on Act 221 and the expectation that Act 221 would sunset 12/31/10. Last year's changes were damaging to us, pay cuts were required and several of our employees had to be laid off due to a shortfall in anticipated funding. The proposed laws would likely eliminate our ability to obtain further funding. Without further funding, it is likely that most of our current employees will lose their



jobs and these new hires will not happen. Past changes to the investor tax credit, along with the bills proposed this year, have already injected a great deal of uncertainty into investors' minds and reduced our ability to raise funds. The change proposed in this bill will almost certainly eliminate further funding this year when we need it most.

Thank you for the opportunity to testify on this important bill.

Sincerely,

Name: Mike Curtis  
Title: Chief Operating Officer  
Company: SDC HAWAII, LLC  
Phone: 808-292-6862  
Email: [mcurtis@hawaii.rr.com](mailto:mcurtis@hawaii.rr.com)

## fukunaga3 - Doris

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 09, 2010 3:25 PM  
**To:** EDTTestimony  
**Cc:** alan.hayashi@baesystems.com  
**Subject:** Testimony for HB2962 on 3/12/2010 1:30:00 PM

Testimony for EDT 3/12/2010 1:30:00 PM HB2962

Conference room: 016  
Testifier position: oppose  
Testifier will be present: Yes  
Submitted by: Alan S. Hayashi  
Organization: Individual  
Address: 207-4 Kawaihae Street Honolulu, Hawaii 96825  
Phone: 808-255-6699  
E-mail: [alan.hayashi@baesystems.com](mailto:alan.hayashi@baesystems.com)  
Submitted on: 3/9/2010

**Comments:**

A blanket deferment of tax credits, brings into play too many credits that should remain in place (in my opinion). I prefer the legislature examine the merits of each credit to determine its value to the economy of this state.

March 11, 2010

TO: Committee on Economic Development and Technology, Senator Carol Fukunga, Chair

FROM: Bill Spencer, President, Hawaii Venture Capital Association

SUBJECT: HB2962, HD 1 being heard March 12, 2010, 1:30p Room 016

Dear Chair and Committee Members:

HVCA strongly opposes this measure. It patently interferes with terms and conditions that may have been committed to between qualified high technology businesses receiving investment from investors under Act 221/215 and their investors. Most if not all companies receiving investment under this bill since 2006 committed to their investors that they would receive credits in accordance with the law specified by Act 221/215. Should the legislature seek to change the law by deferring an investor's ability to claim credits allowed to them at the time of their investment, they would be forcing these companies to break a contractual commitment made by them to their investors. This could result in ruinous results to such companies.

Investors who relied on the ability to claim credits over the statutorily allowed five year period, would also be adversely affected and could take litigious action against not only the company, but the State of Hawaii.

This bill is incredibly ill conceived and could have a disastrous effect on hundreds of businesses and investors. This bill is retroactive and possibly unconstitutional.

I strongly encourage your committee to kill this bill and avoid the consequences of changing terms and conditions relied on by investors and qualified high tech businesses alike.

Sincerely,

Bill Spencer

President

Hawaii Venture Capital Association

Bill: HD 2962 HD1

Hearing Date: March 12, 2010

Time: 1:30 pm

Place: Room 312

**LATE**

Committee: EDT

Chair: Senator Fukunaga

Vice Chair: Senator Baker

I STRONGLY OPPOSE BILL HD 2962 HD 1

My name is Dew-Anne Langcaon and I am President and Co-Founder of Ho'okele Health Technologies, LLC a high tech start up company whose mission is to develop and deploy advanced touchscreen wireless technologies into the homes of the elderly to enable them to live safely, healthy, independently and affordably in their own homes. Our goal is to help seniors, their families and the State of Hawaii to improve the quality and reduce the cost of eldercare which already is having a crushing impact to budgets and our economy through the deployment of technology.

We employ 5 employees including 2 software developers, a physician, an RN and a Social Worker, as well as contract with several local companies for software developers. Our work is focused on developing the technologies and conducting the research as to the efficacy and adoption of such technologies by seniors and their loved ones. Our company is a QHTB and has been funded through investors who believe in our mission and who have been able to mitigate some of their downside risk in our early stage company through the Act 221/215 Investment Tax Credit which has directly allowed us to raise enough capital to bring our vision to near fruition.

This bill defers the use of investment tax credits which will be harmful to my company and its investors. I believe such deferment unfairly and retroactively changes the laws under which knowledgeable investors made informed investment decisions. By changing the rules, the State will have materially changed the anticipated returns upon which investors made their prior investment decisions which would be severely unfair to local individuals and companies who made their investments in good faith and as such could subject the State to costly and protracted litigation and eliminate any anticipated cost savings expected in the budget.

Additionally, we are nearing the end of our pilot phase of product development and are in process of raising additional capital to bring our product to the next level in order to launch to market. However, the uncertainty which this bill has caused is making it impossible for our current and potential new investors to make an informed investment decision. Without sufficient follow on capital, our ability to complete the development of such leading edge technologies which could bring peace of mind and reduce the cost of eldercare for so many families will be jeopardized.

My company is only one of many QHTB's whose future is jeopardized not by the state of the economy or the company's failure to execute, but due to this reversal of a promise to maintain the investment tax credit through its scheduled sunset date at the end of 2010. Our business plan and investors counted on the ability of the company to raise sufficient funding through the end of 2010 to get to the point of revenue generation and self-sustainability. By cutting the investment tax credit prematurely, our and other QHTB's futures are endangered on the cusp of reaching our potential. The State made an investment in QHTB's through the form of the tax credit, and by prematurely ending the credit it is also prematurely ending the State's own ability to enjoy any return on its investment in the form of tax revenue from GET on sales, payroll taxes and income taxes.

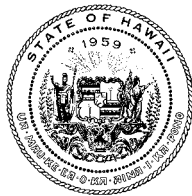
Thank you for the opportunity to testify on this important matter.

Mahalo,

Dew-Anne Langcaon  
President  
Ho'okele Health Technologies, LLC  
808-457-1656  
[dewanne@hookelehealth.com](mailto:dewanne@hookelehealth.com)

LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR



KURT KAWAFUCHI  
DIRECTOR OF TAXATION

STANLEY SHIRAKI  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF TAXATION  
P.O. BOX 259  
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510  
FAX NO: (808) 587-1560

**LATE**

**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TECHNOLOGY  
TESTIMONY REGARDING HB 2962 HD 1  
RELATING TO TAXATION**

**TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**

**DATE: MARCH 12, 2010**

**TIME: 1:15PM**

**ROOM: 016**

---

This measure amends the current Technology Infrastructure Renovation Tax Credit and the High Technology Business Investment Tax Credit by deferring claims of the credit until July 1, 2013.

The Department of Taxation offers the following comments:

**PRIOR CONCERNS WERE CONSIDERED**—Before the House Finance Committee, all of the Department's prior concerns were considered and included in the most recent draft of this measure. The Department has no technical concerns with this measure.

**IMMEDIATE REVENUE GAINS**—The Department points out that this measure provides considerable revenue gains in the immediate three fiscal years.

**FUTURE REVENUE LOSSES**—However; concomitantly, this measure also creates considerable revenue losses in the future fiscal years. This revenue loss is due to the fact that the credits are suspended for two years and then released in year three. As such, there will be a flood of credit usage in that third year. These future revenue losses should be taken into consideration.

**REVENUE IMPACT**—This measure results in the following net revenue gains and losses:

- Revenue Gain FY 2011, \$93.3m
- Revenue Gain FY 2012, \$47.5m
- Revenue Gain FY 2013, \$27.5m
- **Revenue Loss <FY 2014, \$84.2m>**
- **Revenue Loss <FY 2015, \$84.2m>**

**LATE**



**Bill**            **HB2962 HD2**  
**Date**           **March 12, 2010**  
**Time**           **1:30pm**  
**Place**           **Conference Room 016**  
**Committee**   **EDT**  
**Chair**           **The honorable Senator Carol Fukunaga**  
**Vice Chair**   **The honorable Senator Rosalyn Baker**

Aloha Chair Fukunaga, Vice Chair Baker and Members of the Committee,

**Hawaii Science and Technology Council (HSTC) strongly opposes HB2962 HD1.**

We believe that tax credits represent a tool that governments can use to effectively stimulate economic growth and support the creation of sustainable, high-paying jobs. The Qualified High-Tech Business investment and research credits have been key contributors to making Hawaii's high-tech sector one of the fastest-growing in the state.

However, we also recognize the fiscal realities currently facing the state, and the critical, near-term need to balance the state's budget and provide essential social services. Regrettably, in order to meet immediate economic needs, not all initiatives that build long-term economic growth and prosperity may survive without modification or curtailment. The people of Hawaii look to our elected officials to make these difficult, no doubt unpleasant tradeoff decisions.

Curtailed of such long-term growth initiatives is regrettable, but some changes cause more damage than others. Cancellation of tax credit initiatives means investor money will be left on the table going forward, and fewer high-tech jobs will be brought to the state. More damaging than this by far, however, is changing how tax credits for previously made investments will be treated. Investors place money into Hawaii companies and hire local engineers and scientists with the understanding that the State will continue to issue credits as promised. Once their money is in, they cannot retrieve it, and are reliant on the State to keep its end of the bargain. If tax credits for previously made investments are curtailed, delayed, or capped, Hawaii will earn an unwelcome reputation as a place with uncertain investment and political risk. This will make it more difficult to raise funds for all sectors of Hawaii's economy, not just the high-tech sector, and may increase the costs for the State to raise bond monies.

We are concerned that HB2962 HD1, if passed into law, would potentially create such retroactivity issues, by denying the applicability of investment credits for three (3) years. Those who invested in Hawaii high-tech jobs prior to 2010 will find themselves with a significant reduction in value for investments they have already made. Future investors contemplating hiring in Hawaii will have reason to pause and contemplate whether the risks are too great.

HSTC and its member companies and employees understand the need for compromise and shared sacrifice. We request that elected officials carefully consider the damaging effects of retroactivity, and urge the adoption of measures that do not retroactively change the rules of the game for investments already made into Hawaii's economy.

Thank you for your time and consideration.

Respectfully yours,

Jamie Ayaka Moody  
Government Relations  
Hawaii Science & Technology Council  
733 Bishop Street. #1800  
Honolulu, HI 96813





HB2962 HD1 - Relating to Tax Credits

**LATE**

DATE: March 12, 2010

TIME: 1:30 P.M.

PLACE: Room 016

TO: Senate Committee on Economic Development and Technology

Senator Fukunaga, Chair

Senator Baker, Vice Chair

FROM: James P. Karins

President and CEO

Puko'a Scientific

Re: Opposition on HB2962 HD1

Chair, Vice-Chair and Committee Members:

Thank you for the opportunity to provide testimony opposing HB2962 HD1. My name is Jim Karins and I am the President of Puko'a Scientific. Puko'a Scientific is a 17 person company started in 2004 specializing in the interpretation of image and signal data to identify objects, threats or targets for military, security, medical and industrial applications. Puko'a Scientific is in the dual use sector which has proven to be one of the fastest growing technology sectors. Even during the trying year of 2009 we were able to grow to 17 employees; 13 of our 17 employees are full time and 16 of those 17 reside in Hawaii. Of the 12 full time staff in Hawaii, 10 graduated from high schools in Hawaii, 10 graduated from the University of Hawaii or Hawaii Pacific University and at least 4 worked on the mainland prior to finding work in Hawaii. We currently generate more than \$2.5M in revenue and pay over \$1.5M in compensation.

All of us understand the difficult financial condition of the state and want to help. However, HB2962 HD1 overlaps and is possibly in conflict with HB2984 HD2 and HB2867 HD1. Additionally, HB2962 HD1 may have constitutional issues and therefore potential lawsuits relating to the use of investment tax credits from previous investments. Section 5 of the bill makes an attempt to address this issue but it seems to lack sufficient clarity.

I therefore encourage the committee to defer this bill.

Thank you for the opportunity to testify.

/s/James P Karins

James P. Karins  
President and CEO  
Puko'a Scientific  
[karins@pukoa.com](mailto:karins@pukoa.com)

HB2867 HD1 - Relating to Taxation  
HB2962 HD1 - Relating to Taxation  
HB2984 HD2 - Relating to Taxation

**LATE**

DATE: March 12, 2010  
TIME: 1:30pm  
PLACE: Conference Room 016

TO:

COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY  
Senator Carol Fukunaga, Chair  
Senator Rosalyn H. Baker, Vice Chair

FROM: Roy Tjioe, Principal and Founder, Island Film Group

RE: Testimony in Opposition to HB2867 HD1, HB 2984 HD2 and HB 2962 HD1.

Aloha Madam Chair, Madam Vice Chair, and Members of the Committee:

Thank you for the opportunity to testify in STRONG OPPOSITION to HB 2867 HD1, which threatens to ruin the ability of local filmmakers to seek local investment to fund their film and television productions, by (a) retroactively and prospectively restricting the amount of investment tax credits that may be claimed between January 1, 2010 and January 1, 2012, including credits generated prior to January 1, 2010; and (b) retroactively and prospectively restricting the ability to carry over tax credits generated between January 1, 2010 and January 1, 2012. For the same reasons, I also STRONGLY OPPOSE HB 2984 HD2, to the extent it seeks to repeal the investment tax credit incentive.

I am a principal and founder of Island Film Group, a local film and television production company that to date has produced the television series **BEYOND THE BREAK** for the N Network, television movies **SPECIAL DELIVERY**, **FLIRTING WITH FORTY** and **DEADLY HONEYMOON** for Lifetime Channel, and the independent feature films **PRINCESS KAIULANI** (which will be released nationally on May 14) and **SOUL SURFER** (currently in production on the North Shore), **ALL** of which were financed using Act 221. As you know or should know, these productions resulted in the hiring of thousands of local tax paying workers in a dedicated effort to build our local film and television industry. We have been working hard to actively develop other projects for production in Hawaii, in reliance on our ability to utilize Hawaii's tax incentives to raise production capital. Indeed, we seek an extension for an additional year of Act 221, which is scheduled to sunset at year end.

If those in support of the present measures believe that Act 88 (the 15/20% refundable production tax credit) will be sufficient to sustain our efforts, they are proceeding under a false assumption. Act 88 is a refund, which means that the production must already have its production budget raised and in place before the refund can be claimed. While Act 88

is attractive to large studio productions (which already have the money), independent film and television productions such as those we produce cannot benefit from Act 88 unless and until they have raised money to produce their projects. The investment tax credit of Act 221 is critical to the survival of local independent filmmakers. The present measures impair our ability to raise money, and sends a clear message that local independent filmmakers that seek to produce local stories and hire local workers are unwanted.

As an attorney with 19 years of litigation experience at Hawaii's largest firm, I would also like to testify that, apart from eroding investor confidence in the State, the retroactive elements of HB 2867 HD1 are very likely to trigger lawsuits from investors who materially relied on the State's promises in regards to the benefits of Act 221 when they decided to invest in film and television productions. It is my understanding that hundreds of local individuals and entities are affected by the current measures, and I estimate that it will be several years before those lawsuits are resolved. I also believe that the litigation will be resolved in favor of the investors.

Although Hawaii is not immune to the national economic recession, this is exactly the right time to strengthen and promote our economic incentives, not weaken them. This is a time when we have the best opportunity to attract film and television productions, which will bring employment to our local workers and publicity for our islands. It would be a huge mistake for the Legislature to pass these measures in their present form, which would strongly discourage independent producers from looking to Hawaii as a production locale and for co-production capital. In fact, the proper remedy is to extend Act 221 for an additional year and enact strong infrastructure tax credit legislation.

In that regard, the original legislation underlying HB 2962 HD1 proposed to enact HRS 235-110.51, creating a technology infrastructure renovation tax credit, in a commendable effort to spur development of much needed infrastructure supporting the local film and television industry. HB 2962 HD1 seeks to delay the tax benefits that may be received until July 1, 2013, making it a much less attractive incentive, at a time when our infrastructure needs to grow and set itself apart as a production locale. Too many other jurisdictions have beautiful tropical locations and a cheaper currency/labor force on top of generous tax incentives (Puerto Rico, Florida, Fiji), and many also have strong infrastructure elements already in place (Australia, New Zealand). We must elevate our infrastructure base merely to compete with those other locations. Accordingly, I support the intent of the legislation, but OPPOSE the limitations contained in the current version of the bill.

Thank you for the opportunity to testify in OPPOSITION to these pending measures as they are currently written.

Roy Tjioe  
ISLAND FILM GROUP

**LATE**

PACIFICAP  
GROUP

PACIFICAP GROUP, LLC  
820 Mililani Street, Suite 600  
Honolulu, HI 96813  
Direct: 808.237.5388 Fax: 808.537.2188

March 12, 2010

*Testimony for Hearing before the  
Senate Committee on Economic Development and Technology  
Friday, March 12, 2010, 1:30 pm*

*State Capitol, Conference Room 308  
415 South Beretania Street  
Honolulu, Hawaii 96813*

*Re: Testimony in STRONG OPPOSITION to HB 2962 HD1  
Relating to Taxation*

Chair Fukunaga, Vice-Chair Baker, and Committee Members:

Thank you for the opportunity to submit testimony in STRONG OPPOSITION to HB 2962 HD1.

This bill appears to attempt to defer to July 1, 2013 claims of the High Technology Business Investment Tax Credit, commonly known as the "Act 221 Investment Credit" under Section 235-110.9, Hawaii Revised Statutes ("HRS") that could otherwise be claimed beginning on July 1, 2010.

I strongly oppose this bill because:

1. This bill appears to have serious mechanical and legal flaws and is potentially unconstitutional to the extent that it defers the ability to claim Act 221 Investment Credits in current and future years for investments that have already been made prior to the bill's enactment. This bill could trigger litigation against the State from hundreds of Act 221 companies and thousands of their investors.
2. Any retroactive restrictions on investments already made will severely undermine investor confidence in the private sector's ability to trust and work with the State for all economic development initiatives for many years to come. Our State's economy will be severely damaged for many years beyond the end of the current recession.
3. It is HIGHLY UNLIKELY that this bill will result in the budgetary savings for FY 2011-2013 that were submitted to the House Finance Committee.
4. This bill could severely damage Act 221 companies who are nearing profitability but need just a small amount of additional capital to reach self-sufficiency.

While somewhat unclear, it appears that Section 5 of this bill may be attempting to address some retroactivity concerns in the language that reads:

This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

However, the estimated Revenue Impact submitted to the House Finance Committee of \$93.3 million for FY 2011; 47.5 million for FY 2012 and \$27.5 million for FY 2013 CANNOT be achieved mathematically unless credits are retroactively restricted for investments already made.

For example, if \$93.3 million in costs for FY 2011 are to be deferred from new investments only, more than \$266 million in new Act 221 new investments would have to be made in the second half of 2010 (\$93.3 million divided by 35% = \$266.57 million). This is highly unlikely in the current economic environment and would exceed the amount of Act 221 investment made in any prior year.

But if the House Finance Committee's projected cost deferrals from this bill are intended to be achieved by deferring the ability to claim credits from investments already made, such deferrals cannot be achieved if this bill is struck down by the courts as unconstitutional due to their retroactive restrictions on investments already made.

And even if, hypothetically the courts were to ultimately uphold the constitutionality of this bill, the litigation and appeals process, which potentially could involve lawsuits against the State brought by hundreds of Act 221 companies and thousands of their investors, would likely take much longer than three years to settle before the State could actually collect the tax revenues from this bill.

Requiring investors to defer to 2013 credit claims for investments already made could have a substantial adverse impact on their tax and cash flow situations and create further economic damage, in addition to raising significant constitutional problems of retroactivity.

For example, our firm has some very elderly investors who are in their 90's. The deferral of their 2010 credits to 2013 imposed by this bill could have the effect of completely confiscating their credits from them if they should pass away prior to 2013.

Other investors may not be able to use their credits in 2013 and later due to substantially lower tax liability in those later years, whether due to retirement or investment returns earned prior to 2013.

Some corporate investors may have invested funds from their 2010-2012 state tax budgets into Act 221 companies in reliance on the reasonable expectation that Act 221 Investment Credits would be available to cover their 2010-2012 state tax liabilities. Requiring them now to pay their 2010-2012 taxes after they have already invested the cash from their state tax budgets for these years could create serious cash flow problems for these investors.

Thus, the ultimate result of this bill would be to damage local high tech and media companies who are currently in the process of trying to raise needed capital, while wasting potentially

millions of dollars in legal fees from litigation that could be triggered by this bill, while severely alienating and creating cash flow problems for investors who invested in good faith, souring Hawaii's investment environment and undermining the private sector's ability to trust the Legislature and our State government for many, many years to come.

In short, a "lose lose" scenario for all parties involved.

Our State should not be in the business of using tax credits to attract investment from private investors, and then playing "bait and switch" and changing the rules of the game AFTER they have invested in Hawaii in good faith.

This would be neither fair, legal nor financially prudent.

Thank you for the opportunity to testify.

Respectfully submitted,

Jeffrey K. D. Au  
Managing Director and General Counsel  
PacifiCap Group, LLC

**TESTIMONY OF WILLIAM G. MEYER, III**

**LATE**

HEARING DATE/TIME: Friday, March 12, 2010  
1:30 p.m. in Conference Room 016

TO: Senate Committee on Economic Development and Technology

**RE: Testimony in Opposition of HB 2962, HD1**

Dear Chair, Vice-Chair and Committee Members:

My name is William G. Meyer, III. I am an intellectual property attorney who has been practicing law in Honolulu for over 30 years. I represent both locally based and national and international motion picture and television production companies and high technology businesses.

I strenuously oppose HB 2962, HD1.

Respectfully submitted,

**/s/ William G. Meyer, III**

William G. Meyer, III