



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 70, H.D. 2, PROPOSED S.D. 1, RELATING TO ECONOMIC DEVELOPMENT.

BEFORE THE:

SENATE COMMITTEES ON ECONOMIC DEVELOPMENT, GOVERNMENT
OPERATIONS AND HOUSING AND ON TECHNOLOGY AND THE ARTS

DATE: Monday, March 18, 2013 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 16

TESTIFIER(S): David M. Louie, Attorney General, or
Margaret S. Ahn, Deputy Attorney General

Chairs Dela Cruz and Wakai and Members of the Committees:

The Department of the Attorney General provides the following comments on the Proposed S.D. 1 for this bill.

Part I of this bill extends the sunset date of the High Technology Innovation Corporation (HTIC) from June 30, 2013, to June 30, 2018, and changes the composition of HTIC's board of directors.

Part II of this bill establishes a workforce development training program that provides wage reimbursement for on-the-job training to persons who are newly hired by production entities that are pre-qualified to receive the motion picture, digital media, and film production income tax credit. Part II further extends the sunset date of the motion picture, digital media, and film production income tax credit from January 1, 2016, to January 1, 2025.

Part III of this bill creates the Public-Private Partnership Authority (Authority) which shall implement three pilot projects on behalf of public agencies -- a film production facility on state lands, a main-street project on state lands, and a county initiated project.

We respectfully recommend the following amendments to this bill:

1. Section 2, page 3, lines 3-15 – this bill does not provide the option for the new ex officio members of the High Technology Innovation Corporation's board of directors to send a substitute to meetings. The new composition of HTIC's board of directors shall be the heads of various public agencies. It is common for ex officio members to be authorized

- to designate a representative in his or her place. If this is the intent, “or designated representative” should be added to section 2, page 3, lines 4, 5, 7, 9, 11, 13, and 15.
2. Only one current member of the HTIC board of directors will qualify to continue to serve as a board member upon the effective date of this bill. The other current members may have terms of office that extend after that date. We recommend that wording be added to section 2 to make it clear that those terms expire upon the enactment of this bill if that is the intent.
 3. Section 8, page 14, lines 21-22 and page 15, lines 1-7 – this bill does not provide the option for the ex officio members of the Public-Private Partnership Authority’s (Authority) board of directors to send a substitute to meetings. In this bill, the ex officio members include the Comptroller or the Comptroller’s first deputy, the Director of Finance, and the Director of Business, Economic Development, and Tourism. It is common for an ex officio member to be authorized to designate a representative in his or her place. If this is the intent, “or designated representative” should be added to page 15, lines 4, 5, and 7. Also on page 15, line 1, the term “ex officio” should be deleted, as it indicates that there is only one ex officio member, when instead there are four.
 4. Section 8, page 15, lines 8-11, 14-15, and 20-21 – this bill provides for direct legislative appointments to a board that performs executive functions, which may be challenged as a violation of the constitutional separation of powers doctrine. The Authority’s and its board of directors’ function (implementing projects on behalf of public agencies) would likely be construed as an executive function. Therefore, we recommend that the two legislative appointments by the Speaker of the House of Representatives and by the President of the Senate be revised so that the appointments are made “by the Governor from lists provided by the speaker of the house of representatives and the president of the senate, in accordance with section 26-34.”
 5. To clarify whether the nonvoting member counts for quorum, we recommend that wording be inserted in section 8 to clarify the number of members required for quorum and the number of votes required to pass an action by the board. For example, “Three members shall constitute a quorum and a minimum of three affirmative votes shall be necessary for all actions by the board.”

6. Section 8, page 16, lines 17-18 – although this bill authorizes the Authority to lease property from public agencies for its projects, the power to lease is not specifically included in the general powers of the Authority on page 16. For consistency and clarity, we recommended that lines 17-19 on page 16 be amended to read, “(5) Make and execute contracts, leases, and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;”
7. Section 8, page 19, lines 15-18 – this section provides that any revenues generated from the public-private partnership projects shall be deposited into the general fund. We recommend that this section be amended to specify which of the following revenues generated from the projects are to be deposited into the general fund-revenues received by (1) the Authority, (2) the public agency on whose behalf the Authority is implementing the project, or (3) the private partner.
8. Section 8, page 20, line 16-17 – the reference to “section ___-4(a)(4), Hawaii Revised Statutes” should be amended to “section ___-4(4) of the new chapter added to the Hawaii Revised Statutes by section 8 of this Act.”

We respectfully ask that your Committees make the foregoing recommended amendments.

Finally, we also note that article III, section 14, of the Hawaii State Constitution provides that each law shall embrace but one subject, which shall be expressed in its title. This bill, which encompasses the High Technology Development Corporation, workforce development in the Department of Labor and Industrial Relations, the motion picture, digital media, and film production income tax credit, and the Public-Private Partnership Authority, could be challenged on the grounds that it does not embrace but one subject.