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CATHY L. TAKASE
ACTING DIRECTOR

To: House Committee on Economic Revitalization,
Business & Military Affairs

From: Cathy L. Takase, Acting Director

Hearing: Thursday, February 4, 2010, 8 a.m.
State Capitol, Room 312

Re: Testimony on H.B. No. 2413
Relating to Economic Development

OIP takes no position on the substance of this bill, which creates a State private investment fund, but expresses the following concerns about a proposed, broadly worded confidentiality provision.

Section 3 of this bill proposes a new section 211G-E, which provides that materials or data made or received by the fund consisting of trade secrets, commercial or financial information about applicants for or recipients of any investment or assistance rendered by the fund, or regarding an applicant's competitive position, shall not be a public record. The bill does provide that, if the fund purchases a qualified security from an applicant, commercial and financial information about the applicant, excluding confidential business information, shall be deemed a public record. However, if the information is received by the fund after the security purchase, the bill provides that it shall be a public record three years from the date of receipt. OIP has three general concerns concerning the proposed section 211G-E.

First, OIP believes that wording of the confidentiality provision that would make "commercial or financial information" not a public record is overly broad. Without limiting protection to "**confidential**" commercial or financial information, this section appears to protect all commercial or financial information about an applicant or recipient, even information that the applicants or recipients may themselves make available to the public, such as general information about their businesses.

Second, it is unclear why an applicant's commercial and financial information becomes a public record upon the fund's purchase of a security, but information made or received after the purchase is then protected for three years after receipt. Absent a specific purpose to this distinction and assuming that the intent of the provision is to protect confidential business information to the extent it is likely to cause substantial competitive injury, OIP notes that the Uniform Information Practices Act (Modified), chapter 92F, HRS ("UIPA"), already excepts such information from disclosure under its "frustration" exception, section 92F-13(3), HRS.

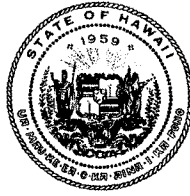
Third, OIP believes that the language allowing the board to meet in executive session to discuss "trade secrets or commercial or financial information" should be amended to again include a limitation to "confidential" commercial or financial information, and to require compliance with all requirements for executive meetings under the State's open meetings law or Sunshine Law, part I of chapter 92, HRS. OIP thus recommends that proposed section 211G-E be amended to read as follows:

§211G-E Protection of Trade Secrets and Confidential Business Information. The private investment fund may protect trade secrets and confidential business information from public disclosure to the extent authorized under chapter 92F. The board, or any committee thereof, may discuss trade secrets or confidential business information in executive meetings in accordance with the procedures required for executive meetings under part I of Chapter 92, HRS.

Thank you for the opportunity to present testimony.

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**HOUSE COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS &
MILITARY AFFAIRS
TESTIMONY REGARDING HB 2413
RELATING TO ECONOMIC DEVELOPMENT**

*****WRITTEN TESTIMONY ONLY*****

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 4, 2010
TIME: 8AM
ROOM: 312

This measure, among other things, amends the current law relating to the State private investment fund to allow transferability of tax credits. This measure also extends the credits to include insurance premiums taxes.

The Department of Taxation ("Department") **opposes the credit transfer amendments; as well as any anticipated revenue loss** anticipated by this measure.

I. THE DEPARTMENT OPPOSES THE AMENDMENT TO ALLOW TRANSFER OF CREDIT.

The Department is strongly opposed to any provision that allows Hawaii tax credits to be sold, assigned, or transferred. Allowing taxpayers to market or sell their tax credits is fundamentally poor tax policy. Selling tax credits can be subject to abuse and suspect motivation by parties involved.

The Department's fundamental and primary concerns regarding credit transfers are the following:

- The transferability rewards a separate taxpayer unrelated to the taxpayer that generated the credit, which is fundamentally poor tax policy for encouraging behavior and directly rewarding that behavior;
- The Department is not setup to regulate credit transfers. Will the Department be required to establish a "Bureau of Credit Conveyances" in order to track transfers? If

this is the case, resources will have to be dedicated to this;

- And, abuse relating tax credit transfer prices will be problematic. The State will be out a \$1 when taxpayers will be transferring this \$1 for pennies.

II. ANTICIPATED REVENUE LOSS

This measure also provides for the funding of the investment fund's allocable credits. Currently, this program is not funded. Funding this program will result in a revenue loss to the general fund equal to whatever is appropriated.

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
**HOUSE COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS & MILITARY
AFFAIRS**
Thursday, February 4, 2010
8:00 AM
State Capitol, Conference Room 312

In consideration of
HB 2413 RELATING TO ECONOMIC DEVELOPMENT.

Chair McKelvey, Vice Chair Choy, and Members of the House Committee on Economic Revitalization, Business and Military Affairs.

The High Technology Development Corporation (HTDC) is in support of the intent of HB 2413, to amend the State Private Investment Fund (SPIF) legislation, in order to further Hawaii's capital formation activities. While I refer to my colleague Mr. Karl Fooks of Hawaii Strategic Development Corporation for detailed analyses and feedback of this bill, HTDC respectfully offers some comments for the Committee's consideration.

- Utah as a comparable state to Hawaii

In order for the Utah model to work effectively, no regional restrictions are placed. Utah as a state, is categorized "higher", or being further along, with regards to venture capital and startup environment. Therefore, Utah has more deal flow than Hawaii and they are in a better position to take the risk that their expenses and investment will directly benefit companies within their state. It is not clear what modifications we can make to this bill to ensure that the State can optimize for the "cheapest financing" and meet the economic development goals that can stand public scrutiny.

- Performing arts products industries

HTDC embraces the evolution and the growth of the performing arts products industries. Rather than tack on these industries, it seems as though the sector is significant enough that they deserve their own vehicle. Separating the legislative initiatives from the get-go may allow for easier accounting later in reports to show industry growth independent of the tech industry. We can better optimize for these industries if they were to be given their own piece of legislation, as Act 88 has done so successfully.

Thank you for the opportunity to submit testimony.