LATE

Bill: HD 2984 HD2

Hearing Date: March 12, 2010
Time: 1:30 pm
Place: Room 312

Committee: EDT
Chair: Senator Fukunaga
Vice Chair: Senator Baker

I STRONGLY OPPOSE BILL HD 2984 HD 2

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.

While I am a big supporter of the high tech industry and the R&D credit, this bill results in the early sunset of the investment tax credit which will be harmful to my company and its investors. 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.

Additionally, 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.

I urge you to strongly fulfill the promise to the high tech industry to maintain the investment tax credit through the end of 2010 so that the companies, investors and the State can realize the expected benefits that were envisioned for Act 221/215.

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

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

KURT KAWAFUCHI
DIRECTOR OF TAXATION

STANLEY SHIRAKI
DEPUTY DIRECTOR

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LATE

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TECHNOLOGY
TESTIMONY REGARDING HB 2984 HD 2
RELATING TO TAX CREDITS

TESTIFIER: **KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**
DATE: **MARCH 12, 2010**
TIME: **2PM**
ROOM: **308**

As amended, this measure extends the tax credit for research activities until 2011 and repeals the high technology business investment tax credit and the technology infrastructure renovation tax credit.

The Department of Taxation (Department) **supports the intent** of repealing the high tech and technology infrastructure tax credits; however is **concerned over potential revenue loss** from extending the research credit.

The Department supports what this measure accomplishes, which is a continuation of the research credit and financing that continuation by repealing other tax incentives. The Department's primary concern relates to the cost of the extension, which results in a revenue loss in Year 2. This cost has not been factored into the Executive Budget. The Department suggests that this measure be passed out of committee in order to continue the discussion of maintaining tax incentives for high technology.

This measure will result in the following revenue impacts—

Revenue Gain:	Revenue Loss:	**NET REVENUE IMPACT**
FY 2011, $13.1m		**FY 2011, $13.1m gain**
FY 2012, $ 9.4m	***<FY 2012, $20.0m>***	***<FY 2012, $10.6m loss>***
FY 2013, $ 7.5m		**FY 2013, $ 7.5m gain**
FY 2014, $ 3.8m		**FY 2014, $ 3.8m gain**
FY 2015, $ 3.8m		**FY 2015, $ 3.8m gain**

LATE

Bill	**HB2984 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) would like to provide comments for HB2984 HD2.

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.

Curtailment 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 agree with the extension of the research tax credit contained in this bill, and are confident that this provision would directly translate to additional high-tech jobs continuing to come to Hawaii. However, we know that many of these same companies have been planning to raise funds to finance expansion and growth within Hawaii, and the quick end to this investment credit will likely lead to unexpected cash crises and possibly layoffs at a number of growing high-tech companies. Moreover, we are concerned that by wiping from the books all language contained in HRS 235-110.91 (concerning the investment tax credit), there may be problems with the administration of credits due to previously made investments.

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

PACIFICAP
GROUP

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LATE

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 2984 HD2
Relating to Taxation

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

Thank you for the opportunity to submit testimony in STRONG OPPOSITION to HB 2984 HD2.

This bill seeks to extend the Act 221 Research Credit for a year while repealing the Act 221 Investment Tax Credit.

While I support the Act 221 Research Credit, I do not think it would be fair or prudent to extend it at the expense of the Act 221 Investment Credit, which according to Tax Department data, is utilized by many more local high tech and media companies.

While somewhat unclear, it appears that Section 4 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, including carryover tax credits.

If this bill is interpreted to retroactively apply to investments already made, it would be unconstitutional and trigger massive litigation against the State and would not result in budgetary savings.

By completely repealing and wiping off the books HRS Section 235-110.9, which is the statutory authority for the Act 221 Investment Credit, this bill would make it extremely difficult, if not impossible for the Tax Department to administer the law in future years for investments already made. It will also create serious legal ambiguities confusion for investors and Act 221 companies. There is no reason to artificially create such legal confusion and chaos, which would result in a tremendous waste of time and resources for both the State and the private sector.

Thank you for the opportunity to testify.

Respectfully submitted,

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

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

TESTIMONY OF WILLIAM G. MEYER, III

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 to HB 2984, HD2

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 2984, HD2.

This bill seeks to extend the Act 221 Research Credit for a year while repealing the Act 221 Investment Tax Credit. I support the Act 221 Research Credit, however, it would be a mistake to extend it at the expense of the Act 221 Investment Credit, which according to Tax Department data, is utilized by many local high tech, entertainment and digital media companies.

If this measure applies retroactively to investments already made, it would probably be deemed unconstitutional and could trigger litigation against the State. In addition, by repealing the statutory authority for the Act 221 Investment Credit, this bill could hamper the Tax Department's ability to administer the law going foward for investments already made.

Respectfully submitted,

/s/ William G. Meyer, III

William G. Meyer, III