



GOV. MSG. NO. 1059

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB1670 HD2 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB1670 HD2 SD2 CD1

A BILL FOR AN ACT RELATING TO THE
INGENUITY CHARTER.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 1670, entitled "A Bill for an Act Relating to the Ingenuity Charter," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1670 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1670 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 25th
day of June, 2007.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1670

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1670, entitled "A Bill for an Act Relating to the Ingenuity Charter."

The purpose of this bill is to establish the Ingenuity Company, a private, for-profit, non-stock, limited liability company chartered by the State, authorized to hold and leverage intellectual property.

This bill is objectionable for a number of reasons. First, this bill appropriates public funds to a private, for-profit company but does so absent standards required by Section 4 of Article VII of the State Constitution that prohibits State appropriations for private purposes.

Second, while its title refers to ingenuity, it is unclear how the bill assists inventors or attracts them to Hawaii. The benefits to the inventor members who grant their intellectual property rights to the company appear to be minimal. The inventor must license their invention to the company under contract. But the bill fails to describe any rights the inventor members receive in return, other than royalties. In that respect, they receive no profits beyond royalties. The bill states that financial rewards of ingenuity are meant to be distributed to others, not to the actual inventors. The remaining portion of generated income from their invention would be distributed to the other members as fees or

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as distributed profits, of which the inventor member does not share. The members who receive all profits are designated private organizations that are not part of the inventors' work. In addition, the inventor members have no guaranteed voting rights in the company.

Under the bill, all assets of this company would be distributed to the private organization members upon dissolution. Rights to the original licenses, remaining funds, and all other assets are neither returned to the inventor members nor to the State. In turn, the private organization members would not be subject to any State oversight and, thus, there would be no accountability for the manner in which these public funds are used. This bill appears to create a vehicle to appropriate public money for private organizations without public accountability.

Third, the bill creates ambiguities and contradictions that are difficult to resolve. Though the company is created by State charter, it is not a government instrumentality. This makes it look as though the company is actually just a conventional private company receiving preferential treatment from the State. The Attorney General believes this unequal treatment may subject this bill to a constitutional challenge under the Equal Protection Clause.

Further, the tension in the bill between creating a State charter, but maintaining the entity as a private, for-profit company, makes unclear the State's authority and legal responsibilities with respect to the Ingenuity Company. On the one hand, there is no attachment to or oversight by a governmental department. On the other hand, a degree of

governmental control is interjected in the bill. This degree of control could render the State legally responsible for the acts of this private company.

To further confuse the rights and obligations of this company, the bill states that the Ingenuity Company is both a "body corporate" and a limited liability company, as defined under chapter 428, Hawaii Revised Statutes. The bill seems to create a hybrid entity with unusual provisions, such as authorizing parties who are not members or managers of the company, to control the voting rights of members. In other words, those who manage the company may vote if and only if third-parties to the company permit these managing members to vote. This creates oversight control by third-parties without imposing any fiduciary responsibility or accountability.

The Ingenuity Company also takes on characteristics of a corporation, rather than a limited liability company. If the company were directed to register as a business in Hawaii as a private company in its current formation, the company would not be able to register due to the ambiguity of its business structure.

It is imperative that we transform Hawaii's economy. Encouraging ingenuity and rewarding innovators who take risks are central to that transformation. This bill does neither. Instead, it transfers the benefits of our inventors' hard work to designated private organizations. Equally important is the care we take in using our resources to be sure that we do not waste them on underdeveloped or impractical solutions. It does a disservice to promote and pass a bill that supports innovation in name only. It is unclear how this bill in its current

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incarnation attracts inventors to Hawaii or assists them in
their innovation.

For the foregoing reasons, I am returning House Bill
No. 1670 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO THE INGENUITY CHARTER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. The legislature finds and declares that:
- 2 (1) Intellectual property is an essential source of
- 3 competitive advantage in the global economy;
- 4 (2) Inventors and other creators of intellectual property
- 5 are an important engine of sustainable economic
- 6 growth;
- 7 (3) Whether working independently or employed by
- 8 corporations, the vast majority of inventors and other
- 9 creators of intellectual property have neither the
- 10 collective representation, institutional strength, nor
- 11 the financial resources necessary to exercise and
- 12 enforce their property rights;
- 13 (4) Hawaii needs to attract inventors and to build its
- 14 reputation as a center of innovation to diversify and
- 15 strengthen its economy;
- 16 (5) Protecting labor and environmental standards in Hawaii
- 17 depends, in part, upon strengthening labor and



1 environmental standards both nationally and globally;
2 and

3 (6) Teaching innovation techniques in our schools is a
4 wise investment in the State's future prosperity.

5 The ingenuity company, which will be governed by a board of
6 directors representing both the creators of intellectual
7 property and educational or labor beneficiaries, provides an
8 opportunity to focus the financial rewards of ingenuity on
9 education and workforce development that will in turn lead to
10 additional inventions and innovations. In this way, it will
11 create a continuing incentive for seasoned inventors and for
12 developing new talent in Hawaii.

13 The purpose of this Act is to establish an entity, in this
14 case the ingenuity company, to hold patents and other
15 intellectual property that has been acquired by the entity to
16 fund educational initiatives contributing to increased workforce
17 skills out of royalties generated from use of the patents; and
18 to otherwise leverage intellectual property for the benefit of
19 education and workforce development.

20 SECTION 2. The Hawaii Revised Statutes is amended by
21 adding a new chapter to be appropriately designated and to read
22 as follows:



1 "CHAPTER

2 INGENUITY CHARTER

3 § -1 Definitions. As used in this chapter, unless the
4 context otherwise requires:

5 "Board" means the board of directors of the company.

6 "Company" means the ingenuity company.

7 "Inventor" means any creator of intellectual property whose
8 work may result in the grant of a patent, copyright, trademark,
9 or other type of intellectual property.

10 "Labor organization" means a formally organized association
11 of workers who have united to represent their collective views
12 on wages, hours, and working conditions.

13 "Pass through entity" means an entity that is not itself
14 subject to tax, and where all applicable taxes are assessed to
15 members of the entity, which report their distributive or pro
16 rata shares of the entity's income, gains, losses, deductions,
17 and credits on their own tax returns.

18 § -2 *Ingenuity company established; purpose.* There is
19 established the ingenuity company, which shall be a body
20 corporate and a private, for-profit, non-stock, limited
21 liability company chartered by the State to:



- 1 (1) Acquire, invest in, license, use, and sell
2 intellectual property and other property for the
3 overall benefit of inventors, labor unions, and public
4 educators;
- 5 (2) Enforce the intellectual property rights of inventors
6 to encourage and reward innovation, as well as to
7 forge an anchor for good jobs in a manner that
8 strengthens labor rights and enhances environmental
9 protection nationally and internationally;
- 10 (3) Engage in any lawful business that is of potential
11 benefit to inventors, labor unions, or public
12 educators, including insuring intellectual property
13 and investing in intellectual property;
- 14 (4) Promote Hawaii's role as a center of innovation;
- 15 (5) Support the teaching of innovation and its application
16 for the common good; and
- 17 (6) Use the right to exclude conferred by intellectual
18 property to raise global labor and environmental
19 standards.

20 § -3 General powers of the company. The company shall
21 have the power to do any lawful acts or things reasonably
22 necessary or desirable to carry out its purposes and protect the



1 lawful rights and interests of its members in connection
2 therewith.

3 **§ -4 Membership classes.** There shall be five classes of
4 company members:

- 5 (1) Educator members;
- 6 (2) Inventor members;
- 7 (3) Labor union members;
- 8 (4) Investor members; and
- 9 (5) The managing member.

10 **§ -5 Member qualifications, selection, rights, and**
11 **obligations.** (a) Educator members shall be appointed by the
12 Hawaii State Teachers Association and the National Education
13 Association, which shall each appoint one educator member to the
14 board. The appointment process for each position shall be
15 determined by each organization.

16 Educator members shall be entitled to a sixty per cent
17 share of the profits of the company after deducting expenses
18 incurred by the company, including corporate management costs,
19 managing member fees, intellectual property insurance, royalty
20 payments to inventor members, and return payments to investor
21 members. The sixty per cent share shall be divided equally
22 between the two educator members. Each educator member shall



1 allocate its share of the company's profits to support the
2 teaching of innovation in a manner that is in compliance with
3 the company's bylaws and policies as adopted by the board.

4 Educator membership shall only expire by an act of the
5 legislature.

6 (b) An inventor member may be a natural person or another
7 entity. Inventor members shall enter into contracts with the
8 company and one or more other members, and shall license,
9 assign, or otherwise grant to the company rights to intellectual
10 property on which the person or entity holds a patent,
11 trademark, trade name, or copyright.

12 The Professional Inventors Alliance and the members of the
13 National Inventors Hall of Fame shall each appoint an inventor
14 member to the board of the company. The appointment process
15 shall be determined by each organization; provided that the
16 National Inventors Hall of Fame shall provide its members with
17 the opportunity to both nominate and vote on its representative
18 to the board. Neither the Professional Inventors Alliance nor
19 the National Inventors Hall of Fame shall be an inventor member.
20 These inventor members shall have no voting rights in the
21 company other than those granted by the Professional Inventors



1 Alliance or the National Inventors Hall of Fame members. The
2 managing member shall also appoint an inventor member.

3 An inventor's membership shall expire at the termination of
4 a member's contract. If an inventor member is engaged in
5 several contracts, membership expires at the end of the last
6 contract.

7 (c) A labor union member shall be any labor organization
8 that enters into a contract with the company, including any
9 local, state, regional, national, or amalgamated body, and any
10 national or international labor federation. The American
11 Federation of Labor and Congress of Industrial Organizations,
12 and Change to Win labor federation shall each appoint one member
13 to the board. These labor union members shall have no voting
14 rights in the company other than those granted by the American
15 Federation of Labor and Congress of Industrial Organizations,
16 and the Change to Win labor federation. The managing member
17 shall also appoint one labor union member to the board.

18 Labor union members shall enter into one or more contracts
19 with the company. Each labor union member shall be entitled to
20 a forty per cent share of the profits derived from contracts it
21 is a party to, after deducting expenses incurred by the company,
22 including corporate management costs, managing member fees,



1 intellectual property insurance, and royalty payments to
2 inventor members and return payments to investor members. These
3 funds shall be expended by labor union members for training of
4 workers or safety and health related practices, in a manner that
5 is in compliance with the company's bylaws and policies as
6 adopted by the board.

7 Labor union membership shall expire at the termination of a
8 member's contract. If a labor union member is engaged in
9 several contracts, membership expires at the end of the last
10 member contract.

11 (d) An investor member may be a natural person or another
12 entity. Investor members shall have no voting rights in the
13 company. Investor members shall invest real, tangible, or
14 intangible assets in the company by entering into an investment
15 contract with the company. Investor members shall enter into
16 one or more contracts with the company to provide capital for
17 the company or any of its members. In exchange for investing
18 capital in the company or any of its members' contracts,
19 investor members shall be entitled to investor return payments
20 enumerated in its member contract. Investor return payments
21 shall be paid out of contract returns after deducting expenses
22 incurred by the company, including corporate management costs,



1 managing member fees, intellectual property insurance, and
2 royalties paid to inventor members before calculating profits to
3 be allocated to labor union members and educator members.

4 Investor membership shall expire at the termination of an
5 investor member's contract. If an investor member is engaged in
6 several contracts, membership expires at the end of the last
7 member contract.

8 (e) The managing member shall be a Hawaii domestic non-
9 profit corporation that has the ability to perform the tasks
10 necessary to carry out the purposes of this chapter on behalf of
11 all of the company's member classes. The principal office of
12 the managing member shall be located in the state. The majority
13 of the members of the corporation's board shall be residents of
14 Hawaii and a majority of the assets of the corporation,
15 including its real property and monetary holdings, shall be
16 located within the state, or held by a financial or other
17 institution or entity with a principal office located within the
18 state. The managing member shall be selected by the president
19 of the senate and the speaker of the house of representatives in
20 consultation with the governor, within thirty days of the
21 effective date of this Act.



1 The managing member shall recruit new members and seek
2 opportunities for members to contract with one another for
3 mutual benefit. The managing member shall interpret the meaning
4 of the company's member contracts when there is any dispute
5 between members who are party to the member contract. Appeal
6 from any interpretation may be made to the entire board. The
7 directors may overturn the managing member's decision by a
8 majority vote of the board.

9 The managing member may be removed and replaced by a
10 majority vote of both houses of the legislature.

11 § -6 Membership meetings. (a) There shall be an annual
12 membership meeting held at a time to be determined by the board;
13 provided that a membership meeting is held approximately every
14 twelve months.

15 (b) The board shall create the means to permit members to
16 participate from a distance by electronic or other means.

17 (c) The chair of the board and the chief executive officer
18 shall present an annual report to the members on the company's
19 affairs, including a financial report and a general description
20 of the number and nature of the board's member contracts and how
21 these contracts met the board's purposes.



1 (d) Special meetings of the members may be called any time
2 by the chair of the board. The chair of the board shall call a
3 special meeting of the membership at the written request of
4 three directors upon a petition signed by at least fifty per
5 cent of any class of members, or twenty-five per cent of all
6 members.

7 § -7 Member's right to sue. Members may sue the board
8 for failure to conduct the business of the company in the best
9 interests of all of the members or according to the purposes of
10 the charter. If the board has created an internal appeal
11 process overseen by a neutral outside party, the right to sue
12 shall only be available after exhaustion of the internal appeal
13 process. Hawaii courts shall give the same deference to this
14 internal process that they would give to any state agency
15 administrative tribunal.

16 § -8 The board of directors. (a) There shall be nine
17 board members chosen by various constituencies pursuant to this
18 chapter. The members shall be appointed in the following
19 numbers by the following organizations:

- 20 (1) One member by the Hawaii State Teachers Association;
21 (2) One member by the National Education Association;
22 (3) One member by the Professional Inventors Alliance;



- 1 (4) One member by a vote of the members of the National
2 Inventors Hall of Fame;
- 3 (5) One member by the American Federation of Labor and
4 Congress of Industrial Organizations;
- 5 (6) One member by the Change to Win labor federation;
- 6 (7) Three members by the managing member, of whom:
- 7 (A) One member shall represent a labor organization;
- 8 (B) One member shall be an inventor or represent an
9 inventor's organization; and
- 10 (C) One member shall serve as the chair of the board
11 of directors.

12 (b) If an organization fails to appoint a member to the
13 company under this section within sixty days of a written
14 request by the managing member, the managing member shall
15 appoint an acting board representative for that organization
16 from among the constituency represented by the organization.

17 § -9 Terms of office. (a) Each member of the board
18 shall be appointed for a term of five years; provided that the
19 terms of members first appointed to the board shall be as
20 follows:

- 21 (1) Two-year terms: the members appointed respectively by
22 the Hawaii State Teachers Association, Change to Win



- 1 labor federation, and the Professional Inventors
2 Alliance;
- 3 (2) Three-year terms: the members appointed respectively
4 by the American Federation of Labor and Congress of
5 Industrial Organizations, National Education
6 Association, and the managing member to represent
7 inventors;
- 8 (3) Four-year terms: the members appointed respectively
9 by the National Inventors Hall of Fame and the
10 managing member to represent labor; and
- 11 (4) Five-year term: the chair of the board.
- 12 (b) A board member may be recalled at any time without
13 cause by formal action by the appointing body and replaced by
14 another member who shall serve out the remainder of the former
15 director's term. A member may serve any number of terms and may
16 be removed from office for cause, by a vote of a majority of the
17 remaining board members then in office.
- 18 § -10 Duties of the board of directors. The board of
19 directors shall:
- 20 (1) Elect all officers besides the chair, including a
21 secretary, a treasurer, and one or more vice-chairs;



- 1 (2) Hire, fire, evaluate, and determine compensation for
2 the chief executive officer;
- 3 (3) Determine policy for the company, operate the company
4 to fulfill the purposes of this charter, and serve as
5 fiduciaries in the best interests of all the members;
- 6 (4) Review company member contracts to ensure that they
7 comply with the company's purpose, which may include
8 the creation of criteria for contract evaluation and
9 delegation of the contract review function to staff;
- 10 (5) Hold an annual membership meeting; and
- 11 (6) Create and amend the company's bylaws to further the
12 purposes of this charter.

13 § -11 Board meetings. (a) The board shall meet
14 monthly, unless rescheduled by the chair of the board.

15 (b) Meetings may be held in any location convenient to the
16 board or in multiple locations. Directors may participate in
17 the meeting by any electronic or other method that allows each
18 director to speak, hear, and be heard by all the others.

19 (c) Notice of any meeting may be waived by directors if a
20 waiver is signed before, at, or after a meeting.



1 (d) Unanimous board action may be taken without a meeting;
2 provided that all directors sign a resolution noting their
3 agreement.

4 (e) Special meetings of the board may be called at any
5 time by the chair, or by a notice signed by three directors.

6 (f) Special meetings of the board or company members shall
7 be called by the chair upon a petition signed by at least twenty
8 per cent of any class of members or ten per cent of all members.

9 § -12 **Board member compensation.** A member of the board
10 of directors shall not be paid more than the average annual
11 compensation for the members of the Hawaii State Teachers
12 Association, plus actual expenses incurred in carrying out the
13 member's duties.

14 § -13 **Executive committee.** The board of directors may
15 delegate its duties to an executive committee made up of its
16 officers. The executive committee may also act on behalf of the
17 board when action is needed between meetings, subject to
18 authorization or rescission at the next board meeting.

19 § -14 **Officers.** (a) The officers of the board shall be
20 elected by the board at its annual meeting.

21 (b) The chief executive officer may be hired on a contract
22 exceeding one year if the board so chooses.



1 (c) The chief executive officer shall:

2 (1) Provide monthly reports to the board and annual
3 reports to the members;

4 (2) Hire staff and consultants as necessary to carry out
5 the purpose and business of the company; and

6 (3) Prepare an annual report on the company to the
7 legislature.

8 The board of directors shall review and approve the annual
9 report. The chief executive officer and the treasurer shall
10 sign a statement attesting to the veracity of the information in
11 the annual report provided to the legislature.

12 (d) The board shall designate a vice-chair to assume the
13 duties of the chair whenever the chair is unavailable to chair a
14 meeting or is otherwise incapacitated or unreachable.

15 (e) The secretary shall:

16 (1) Maintain all books and records of the company and be
17 responsible for all required legal filings;

18 (2) Maintain accurate records of the current membership
19 status of all current and past members; and

20 (3) Maintain records of the board members' staggered terms
21 of office and provide notice to the board ninety days



1 before each annual meeting of the terms that will
2 expire at that annual meeting.

3 The secretary or the chair may sign contracts on behalf of
4 the company.

5 (f) The treasurer shall:

6 (1) Maintain and oversee the financial records of the
7 company;

8 (2) Make a financial report at every regular meeting of
9 the board and at the annual membership meeting; and

10 (3) Prepare the financial report that shall be included in
11 the annual report to the legislature.

12 § -15 Taxation and distributions to members. The
13 company shall be a limited liability company within the meaning
14 of chapter 428, but shall not be subject to the registration
15 requirements of the department of commerce and consumer affairs.
16 As a pass through entity, income of the company shall not be
17 subject to state income tax at the company level. Distribution
18 of the company's profits, property, or assets to any member
19 shall be reported on that member's income tax returns.

20 § -16 Disposition of assets. Upon dissolution of the
21 company, assets shall be allocated as follows:



1 (1) Forty per cent to be divided equally between the
2 American Federation of Labor and Congress of
3 Industrial Organizations, and the Change to Win labor
4 federation to support strategic alliances between
5 labor unions and inventors; and

6 (2) The remaining sixty per cent to be divided equally
7 between the Hawaii State Teachers Association and the
8 National Education Association for allocation by them
9 to programs teaching innovation.

10 § -17 Charter amendments. (a) Amendments to this
11 charter shall be made by an act of the legislature.

12 (b) The board may create and may amend bylaws to further
13 elaborate the company's purpose, structure, and processes;
14 provided that such bylaws do not conflict with this charter.

15 § -18 Duration. This charter is perpetual unless
16 rescinded by a two-thirds vote of both houses of the
17 legislature.

18 § -19 Conflict of laws. This chapter does not supersede
19 any existing labor laws of the State. If there is any conflict
20 between the two, the labor law shall prevail."

21 SECTION 3. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$30,000 or so much



1 thereof as may be necessary for fiscal year 2007-2008 to
2 capitalize the ingenuity company.

3 The sum appropriated shall be expended by the department of
4 business, economic development, and tourism for the purposes of
5 this Act.

6 SECTION 4. This Act shall take effect on July 1, 2007.

