



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

GOV. MSG. NO. 835

July 11, 2006

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

I am transmitting herewith HB3118 HD1 SD1 CD1 without my approval, and with the statement of objections relating to the measure.

HB3118 HD1 SD1 CD1

A BILL FOR AN ACT RELATING TO
CORPORATIONS.

Sincerely,

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

LINDA LINGLE

VETO

HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 3118
H.D. 1
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO CORPORATIONS.

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

1 SECTION 1. The legislature finds that corporations play an
2 increasingly dominant role in our society. While they often
3 provide important goods and services, in doing so they have the
4 potential -- and sometimes the incentive -- to cause harm to
5 workers, the environment, consumers, public health and safety,
6 human rights, and the communities in which they operate. This
7 occurs because the management of a corporation has a fiduciary
8 duty to act in the best interest of the corporation, which is
9 measured, for the most part, as maximizing profit for
10 shareholders. Unfortunately, the interests of "stakeholder"
11 constituencies that are deeply entwined with and affected by the
12 corporation's activities, such as employees, consumers,
13 creditors, the environment, and the local community, fall
14 outside the corporate structure.

15 The legislature also finds that, to protect the interests
16 of stakeholders and the public, the legislative response
17 historically has been to draft a new law or regulation that
18 responds to the harm caused by corporate conduct. Important

HB3118 CD1 HMS 2006-3835



1 legislation, including minimum wage requirements, labor laws
2 protecting worker rights to unionize, environmental regulations,
3 and consumer protection statutes, all establish standards for
4 protecting fundamental public interest values and ensuring a
5 safe and productive society. However, because the profit motive
6 and duty to shareholders governs corporate decision-making,
7 corporate decision-makers can be put in the challenging position
8 of having their duty to maximize profit run at odds with
9 societal interests, such as living wages and pensions for
10 employees or a clean environment.

11 The legislature further finds that it is time to consider
12 moving away from the regulatory approach to protecting the
13 public interest by addressing the structural problems of the
14 corporation that are at the heart of the tension between
15 business and stakeholder interests. Creating an alternative
16 corporate model that would integrate the interests of
17 stakeholders and the public interest into the structure and
18 duties of businesses would still allow corporations to generate
19 profit for shareholders. Companies incorporating under this
20 model would be required to have employee and public interest
21 representatives on the board of directors. Further, directors
22 of a such companies would evaluate the best interests of the



1 corporation based on its financial performance, as well as the
2 long- and short-term interests of employees, customers, the
3 state and local economy, and community and general public
4 interests. The structural incentives that, in the current model
5 of corporate law, create tension between private and public
6 interests would be transformed to align private and public
7 interests.

8 The purpose of this Act is to establish a task force to
9 determine how to authorize the establishment of corporations
10 structured to recognize, as corporate interests, the interests
11 of employees and of the public in areas such as wages, the
12 environment, and consumer protection, and provide incentives for
13 incorporation of responsible companies that not only consider
14 the public interest in doing business but integrate the public
15 interest into the structure and duties of the business.

16 SECTION 2. (a) There is established within the department
17 of commerce and consumer affairs the responsible corporation
18 task force.

19 (b) The responsible corporation task force shall include
20 as members:



- 1 (1) The director of commerce and consumer affairs, or the
2 director's designee, who shall serve as the
3 chairperson;
- 4 (2) The commissioner of securities of the department of
5 commerce and consumer affairs, or the commissioner's
6 designee;
- 7 (3) The chair of the business law section of the Hawaii
8 State Bar Association, or the chair's designee, and
9 another member of the business law section to be
10 designated by the President of the Hawaii State Bar
11 Association;
- 12 (4) The dean of the William S. Richardson School of Law,
13 or the dean's designee; and
- 14 (5) The dean of the school of business of the University
15 of Hawaii, or the dean's designee, and a member of the
16 faculty of the school of business as designated by the
17 dean.
- 18 (c) The task force shall:
- 19 (1) Consider how best to authorize the establishment of
20 corporations structured to recognize, as corporate
21 interests, the interests of employees and of the
22 public in areas such as wages, the environment, and

1 consumer protection and provide incentives for
2 incorporation of responsible companies that not only
3 consider the public interest in doing business but
4 integrate the public interest into the structure and
5 duties of the business, including specific:

6 (A) Incentives for incorporation as a responsible
7 corporation;

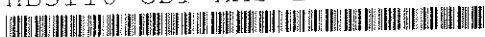
8 (B) Standards for determining whether the corporation
9 will meet and continues to meet the requirements
10 for receiving the incentives; and

11 (C) Procedures by which the standards can be
12 enforced, including penalties to be imposed;

13 (2) Use as a starting point in its deliberations, to the
14 extent feasible, the intent and provisions of House
15 Bill No. 3118, S.D.1, Regular Session of 2006;

16 (3) Conform provisions for the establishment and operation
17 of these responsible corporations, to the extent
18 feasible, to existing Hawaii law on corporations,
19 including chapter 414, Hawaii Revised Statutes;

20 (4) Identify specific provisions of chapter 414, Hawaii
21 Revised Statutes, that would not be applicable to the
22 establishment and operation of these responsible



1 corporations and specify in detail the alternative
2 provisions that would apply in each instance;

3 (5) Identify the resources, including funding, necessary
4 to implement registration of responsible business
5 corporations; and

6 (6) Determine a timetable for the implementation of
7 registration of responsible business corporations by
8 the department of commerce and consumer affairs.

9 (d) The task force shall submit its findings and
10 recommendations to the legislature, including proposed
11 legislation, no later than twenty days prior to the convening of
12 the regular session of 2007.

13 (e) The members of the task force shall serve without
14 compensation but shall be reimbursed for expenses, including
15 travel expenses, necessary for the performance of their duties.

16 (f) The department of commerce and consumer affairs shall
17 provide support services necessary to assist the task force in
18 achieving its purposes under this Act.

19 (g) The task force shall cease to exist on June 30, 2007.

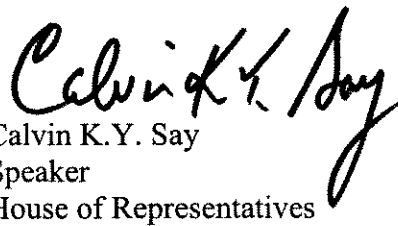
20 SECTION 3. This Act shall take effect upon its approval.

HB No. 3118 HD 1 SD 1 CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 4, 2006
Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Final Reading in the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Regular Session of 2006.



Calvin K.Y. Say
Speaker
House of Representatives



Patricia Mau-Shimizu
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: May 4, 2006
Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Final Reading in the Senate of the Twenty-Third Legislature of the State of Hawaii, Regular Session of 2006.



Robert Bunda
President of the Senate



Paul Kawaguchi
Clerk of the Senate

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

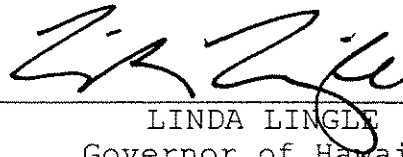
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented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

WHEREAS, House Bill No. 3118, entitled "A Bill for an Act Relating to Corporations," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 3118 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. 3118 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 26th day
of June, 2006.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2006

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 3118
Honorable Members
Twenty-Third 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. 3118, entitled "A Bill for an Act Relating to Corporations."

The purpose of this bill is to establish a task force to determine how to authorize the establishment of corporations structured to incorporate and protect the interests of employees and the public, and provide incentives for the creation of "responsible" companies that not only consider the public interest, but integrate the public interest into the structure and duties of the corporation.

This bill is objectionable because it assumes that shareholder and community interests are at odds. This presupposes that corporations are so driven by their bottom lines that they do not care about their employees, their customers, the environment, public health and safety, or their communities. The bill's preamble is especially objectionable because it contends that corporations are incentivized and, thus, move deliberately to cause harm to those community interests. This assumes that corporations ignore their greatest asset (i.e., their employees) and their target audience (i.e., their customers). Nothing could be further from reality.

In the real world, a business must be responsive to its employees and its customers, for without them, the business will fail. Corporations are comprised of our neighbors; they are active at community events; and they are some of the most

generous givers to charities in our community. To suggest that corporations would choose profit over the communities they operate in draws a false distinction and does a disservice to all of the hard working private-sector people who contribute to the betterment of our community.

Second, this bill is objectionable because it is inconsistent with other states' laws and, therefore, moves us in the wrong direction. It is flatly inconsistent with the recent progress that the State has made in becoming more business-friendly, and would move us back, once again, into the business-unfriendly column. My Administration has worked hard to make it easier for new businesses to come to Hawaii and increase competition in the marketplace. One way that we do this is to adopt model business laws and uniform legislation that have been adopted in other states across the nation. Adopting model laws means that businesses are familiar with the regulatory scheme and do not have to invest large amounts of capital to comply with regulatory laws that are unique to one location. As this bill is not based upon uniform legislation, it will not have the effect of enhancing Hawaii's business-friendly reputation. Instead, this bill will likely have the opposite effect, perpetuating the impression that Hawaii is anti-business.

Third, this bill is objectionable because it takes a myopic view of corporate governance. Rather than exploring other approaches to improving corporate governance and then determining which approach is appropriate for Hawaii, this bill refers to the Senate Draft as the basis for discussion and thereby rushes into an approach that will likely perpetuate Hawaii's anti-business reputation. If the intent were to improve corporate governance, it would have been more appropriate to charge the task force with

examining a variety of approaches and then recommending the most appropriate approach for Hawaii, rather than requiring that the task force begin by considering how to disempower corporate shareholders.

Finally, I am concerned with the bill's potential impact on tax revenues. Both the House and the original Senate version of this bill reflected what I believe to be the obvious fact that shifting control of corporations from shareholder investors to those representing community interests will not happen without financial incentives. As a result, those versions included tax breaks for those investing in "responsible" corporations. The Senate Committee on Ways and Means wisely removed the tax break provisions from the bill, but the task force will surely have to consider whether tax breaks are necessary to make this new corporate form feasible. Giving tax breaks to encourage the creation of alternative corporate forms is bad public policy. If those corporations cannot succeed in the marketplace, their good intentions notwithstanding, I am not willing to force taxpayers to subsidize an experiment of this sort.

It is unusual for me to object to the creation of a task force, as a task force usually reflects an honest attempt to thoroughly consider an issue and, as a result, incorporates concepts of intellectual exploration, openness, and transparency that I frequently champion. In this case, though, I believe that the deck is stacked in favor of a demonstrably flawed concept. If the task force was not directed to start from the Conference Draft version of the bill, and if the Conference Draft itself did not reflect such hostility toward local business, it would be less problematic. Hostility toward business, though, is the

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 3118
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essence of the proposal, and for that reason I cannot support it.

For the foregoing reasons, I am returning House Bill
No. 3118 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii