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TO THE HOUSE JUDICIARY COMMITTEE

THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

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3:45 p.m.
Conference Room 325

**TESTIMONY ON SENATE BILL NO. 886, S.D. 1, H.D. 1
RELATING TO BUSINESS REGISTRATION**

TO THE HONORABLE JON RIKI KARAMATSU, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Tung Chan, Commissioner of Securities and head of the Business
Registration Division, Department of Commerce and Consumer Affairs ("Department").
The Department appreciates the opportunity to testify on Senate Bill No. 886, Senate
Draft 1, House Draft 1, which is an Administration bill relating to business registration.
The Department strongly supports this measure and respectfully requests that the
Committee pass this House Draft 1 of Senate Bill No. 886, as is.¹

This bill makes housekeeping amendments to clarify business registration laws
and to correct technical errors, ambiguities and inconsistencies.

¹ This House Draft 1 is almost identical to the companion HB1068 that passed through the House in
February. We prefer this draft to Senate Draft 1 of the bill. The Senate Draft 1 of this bill made changes
that were intended to be technical and nonsubstantive in nature but the changes were inadvertently
substantive and technically flawed. The previous committee agreed and introduced this House Draft 1.

1) Corporate Existence

The first proposed change is to make the laws consistent with model law and other HRS provisions by deleting the word "may" in the corporation, nonprofit corporation, and professional corporation provisions that deal with the continuation of corporate existence after dissolution. Technically, the corporation continues to exist after dissolution for the limited purpose of winding up business and is not optional as "may" suggests. The Model Business Corporation Act ("MBCA") as well as the Model Nonprofit Corporation Act expressly provide that corporate existence "continues." The proposed change is to make the law consistent with this concept and with the model laws and Hawaii laws. The affected Hawaii statutes are sections 414-402(e), 414D-249(e), 415A-18(c) and (f), HRS.

2) References to "Involuntary" Dissolutions and Cancellations

Second, the bill proposes to change references to "involuntary" dissolution or cancellation to "administrative" dissolution or cancellation in the corporation, nonprofit corporation, and general partnership statutes. The current references are incorrect and otherwise inconsistent with the rest of the business entity chapters that describe the formal term of the dissolution or cancellation as an "administrative" one. The affected statutes are sections 414-403(b) and 414D-250(b), HRS.

3) Hawaii (domestic) Entity vs. Foreign (non-Hawaii) Entity

The third change is to clarify the technical administrative filing procedures for converting an entity into a domestic entity as opposed to a foreign entity. The bill deletes references to "foreign corporations" and places the adjective "domestic" in front

of the description of partnerships in recognition of the fact that foreign entities cannot file like domestic entities because foreign entities must have origination documents in their own jurisdiction. This bill makes the statute consistent with our technical filing procedures. The affected statutes are sections 415A-16.6(b), 425-193(c), 425E-1103(c) and 428-902.6(b), HRS.

4) Clarification of When Reinstatement of General Partnerships are Available

This bill also clarifies that reinstatement for a cancelled general partnership is available if the partnership is a domestic Hawaii partnership. If a foreign partnership's filings are cancelled by their foreign jurisdiction, the partnership must seek reinstatement from the state in which it was originally formed. In order to draw this distinction between technical foreign and domestic reinstatement procedures, the word "domestic" is inserted before "general partnership" in section 425-14, HRS and "statement of foreign qualification" is deleted in section 425-164, HRS.

5) Electronic Transmission of Notice to Members of Nonprofit Corporations

This bill proposes to conform nonprofit corporation law with profit corporation law by adding to the nonprofit law the same option for notice by electronic transmission currently allowed to profit corporations. Language for a new definition of "electronic transmission" added to chapter 414D, HRS, was borrowed from section 414-3, HRS, and the nonprofit corporation notice provisions are amended to mirror the language in section 414-4, HRS. The affected statutes are sections 414D-14 and 414D-15, HRS.

BREG's annual housekeeping bill is intended to make our business registration law as consistent in language as possible to avoid any unforeseen problems in

interpretation of provisions from one HRS chapter to the next. Whenever possible, we also track the language of model laws to provide uniformity with other states' laws and ease compliance for businesses. This House Draft 1 is successful in maintaining the consistency of language throughout our business registration laws.

I respectfully request your support of Senate Bill No. 886, House Draft 1, as is, which will help improve the business climate in Hawaii. Thank you for the opportunity to testify. I will be happy to answer any questions the Committee may have.