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TO THE HOUSE ECONOMIC REVITALIZATION & BUSINESS COMMITTEE

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

Date: Tuesday, March 15, 2011

Time: 8:00 a.m.

Conference Room: 312

**TESTIMONY ON SENATE BILL NO. 298, SD3
RELATING TO BUSINESS REGULATION**

TO THE HONORABLE ANGUS L. K. MCKELVEY & THE HONORABLE ISAAC W. CHOY,
CHAIRS, AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to testify. My name is Tung Chan, Commissioner of Securities for the Business Registration Division (BREG), Department of Commerce and Consumer Affairs ("Department").

The Department has opposed SB 298 in a number of previous drafts. We have, however, worked with the proponents of the bill on Senate Draft 3 and have agreed with the proponents to no longer oppose the bill in its revised form. We have agreed with the proponents to several additional clarifying changes as set forth in proposed House

Draft 1 attached hereto. For these reasons, the Department asks that if the Committee wishes to pass the bill, that the Committee passes it in the form of House Draft 1 as provided to the Committee as an attachment to this testimony.

Thank you for the opportunity to testify. I will be happy to answer any questions the Committee may have.

A BILL FOR AN ACT

RELATING TO BUSINESS REGULATION.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

"CHAPTER

SUSTAINABLE BUSINESS CORPORATIONS

6 § -1 Purpose and findings. This chapter authorizes a
7 designation and code of conduct for a business corporation to
8 offer entrepreneurs and investors the option to build and invest
9 in businesses that operate in a socially and environmentally
10 sustainable manner. Enforcement of those responsibilities comes
11 not from governmental oversight, but rather from new provisions
12 on transparency and accountability included in this chapter.

13 § -2 Definitions. As used in this chapter:

14 "Benefit director" means the director designated as the
15 benefit director of a sustainable business corporation under
16 section -7.



1 "Benefit officer" means the individual designated as the
2 benefit officer of a sustainable business corporation under
3 section -9.

4 "General public benefit" means a material positive impact
5 on society and the environment, taken as a whole and as measured
6 by a third-party standard under section -12, from the
7 business and operations of a sustainable business corporation.

8 "Independent" means having no material relationship with a
9 sustainable business corporation or any of its subsidiaries.

10 "Material owner" means a shareholder who holds either
11 beneficially or of record five per cent or more of the
12 outstanding shares of a sustainable business corporation.

13 "Material relationship" means a relationship between a
14 person and a sustainable business corporation where:

15 (1) The person is, or has been within the last three
16 years, an employee other than a benefit officer of the
17 sustainable business corporation or any of its
18 subsidiaries;

19 (2) The person is related by blood, marriage, or adoption
20 to; is a party to a civil union with; is a reciprocal
21 beneficiary or household member of; or resides with an
22 officer other than a benefit officer or director of



1 the sustainable business corporation or any of its
2 subsidiaries; or

- 3 (3) The person or an association of which the person is a
4 director, officer, or manager or in which the person
5 owns beneficially or of record five per cent or more
6 of the outstanding equity interests or the outstanding
7 shares of the sustainable business corporation;
8 provided that percentage ownership in an association
9 shall be calculated as if all outstanding rights to
10 acquire equity interests in the association had been
11 exercised.

12 "Minimum status vote" means that in addition to any other
13 approval or vote required by this chapter or the bylaws adopted
14 by the shareholders:

- 15 (1) The holders of shares of every class or series shall
16 be entitled to vote on the corporate action regardless
17 of any limitation stated in the articles of
18 incorporation or bylaws on the voting rights of any
19 class or series; and
- 20 (2) The corporate action shall be approved by vote of the
21 shareholders of each class or series entitled to cast



1 at least two-thirds of the votes that all shareholders
2 of the class or series are entitled to cast thereon.

3 "Subsidiary" of a person means an association in which the
4 person owns beneficially or of record fifty per cent or more of
5 the outstanding equity interests; provided that a percentage of
6 ownership in an association shall be calculated as if all
7 outstanding rights to acquire equity interests in the
8 association had been exercised.

9 "Sustainable business corporation" means a domestic
10 corporation, ^{^ incorporated under chapter 414,} ~~as defined in section 414.3,~~ ^{also} that has elected to ^A
11 become subject to this chapter and whose status as a sustainable
12 business corporation has not been terminated as provided in this
13 chapter.

14 "Third-party standard" means a standard for defining,
15 reporting, and assessing overall corporate social and
16 environmental performance that conforms to the requirements of
17 this chapter.

18 § -3 Election of a domestic corporation to become a ^{incorporated}
19 sustainable business corporation. (a) A domestic corporation ^{^ under}
20 may elect to become a sustainable business corporation under ^{chapter 414}
21 this chapter by including in its articles or amending its
22 articles to include a statement that the corporation is a



1 sustainable business corporation. An amendment pursuant to this
2 subsection shall not be effective unless it is adopted by at
3 least the minimum status vote.

4 (b) If a corporation that is not a sustainable business
5 corporation is a party to a merger, consolidation, or division,
6 or is the exchanging corporation in a share exchange, and the
7 surviving, new, or any resulting corporation in the merger,
8 consolidation, division, or share exchange is to be a
9 sustainable business corporation, then the plan of merger,
10 consolidation, division, or share exchange shall not be
11 effective unless it is adopted by the corporation by at least
12 the minimum status vote.

13 § -4 Termination of sustainable business corporation
14 status. (a) A sustainable business corporation may terminate
15 its status as such and cease to be subject to this chapter by
16 amending its articles to delete the statement that the
17 corporation is a sustainable business corporation. An amendment
18 pursuant to this subsection shall not be effective unless it is
19 adopted by at least the minimum status vote.

20 (b) If a plan of merger, consolidation, division, or share
21 exchange would have the effect of terminating the status of a
22 business corporation as a sustainable business corporation, the



1 plan shall not be effective unless it is adopted by at least the
2 minimum status vote.

3 § -5 Corporate purposes. (a) Every sustainable
4 business corporation shall have among its purposes the creation
5 of a general public benefit.

6 (b) In addition to the purposes described in subsection
7 (a), the articles of a sustainable business corporation may
8 identify one or more specific public benefits for which the
9 sustainable business corporation was created. The
10 identification of a specific public benefit under this
11 subsection does not limit the obligation of a sustainable
12 business corporation to create a general public benefit.
13 Allowable specific benefits for sustainable business
14 corporations subject to this chapter include:

- 15 (1) Providing low-income or underserved individuals or
16 communities with beneficial products or services;
17 (2) Promoting economic opportunity for individuals or
18 communities beyond the creation of jobs in the normal
19 course of business;
20 (3) Preserving the environment;
21 (4) Improving human health;



- 1 (5) Promoting the arts, sciences, or advancement of
- 2 knowledge;
- 3 (6) Increasing the flow of capital to entities with a
- 4 public benefit purpose; and
- 5 (7) The accomplishment of any other particular benefit for
- 6 society or the environment.

7 (c) The creation of general and specific public benefits
8 as provided in subsections (a) and (b) shall be in the best
9 interests of the sustainable business corporation.

10 (d) A sustainable business corporation may amend its
11 articles to add, amend, or delete the identification of a
12 specific public benefit for which the sustainable business
13 corporation was created. An amendment pursuant to this
14 subsection shall not be effective unless it is adopted by at
15 least the minimum status vote.

16 § -6 Standard of conduct for directors. (a) In
17 discharging the duties of their respective positions, the board
18 of directors, committees of the board, and individual directors
19 of a sustainable business corporation, in considering the best
20 interests of the sustainable business corporation:

- 21 (1) Shall consider the effects of any action of the
- 22 sustainable business corporation upon:



- 1 (A) The shareholders of the sustainable business
2 corporation; and
3 ^{accomplishment of}
4 (B) The general and specific public benefits set
5 forth in the sustainable business corporation's
6 purposes; and
7 (2) May consider:
8 (A) The employees and workforce of the sustainable
9 business corporation and its subsidiaries and
10 suppliers;
11 (B) The interests of customers as beneficiaries of
12 the general or specific public benefit purposes
13 of the sustainable business corporation;
14 (C) Community and societal considerations, including
15 those of any community in which offices or
16 facilities of the sustainable business
17 corporation or its subsidiaries or suppliers are
18 located;
19 (D) The local and global environment;
20 (E) The short-term and long-term interests of the
21 sustainable business corporation, including
22 benefits that may accrue to the sustainable
business corporation from its long-term plans and



1 the possibility that these interests may be best
2 served by the continued independence of the
3 sustainable business corporation;

4 (F) The ability of the sustainable business
5 corporation to accomplish its general public
6 benefit purpose and any specific public benefit
7 purpose;

8 (G) The resources, intent, and conduct of any person
9 seeking to acquire control of the corporation;
10 and

11 (H) Any other pertinent factors or the interests of
12 any other group that they deem appropriate.

13 (b) A director shall not be personally liable for monetary
14 damages for any action taken as a director if the director
15 performed the duties of the director's office in compliance with
16 the general standards of conduct pursuant to section 414-221.

17 § -7 **Benefit director.** (a) The board of directors of a
18 sustainable business corporation shall include one director who
19 shall be designated the "benefit director" and who shall have,
20 in addition to all of the powers, duties, rights, and immunities
21 of the other directors of the sustainable business corporation,



1 the powers, duties, rights, and immunities provided in this
2 section.

3 (b) The benefit director shall be elected pursuant to
4 sections 414-193 and 414-194 and may be removed in the manner
5 provided by sections 414-198 and 414-199. The benefit director
6 may serve concurrently as the benefit officer. The articles or
7 bylaws of a sustainable business corporation may prescribe
8 additional qualifications of the benefit director, provided that
9 the qualifications are consistent with this subsection.

10 (c) The benefit director shall prepare, and the
11 sustainable business corporation shall include in the annual
12 benefit report to shareholders required by section -11, a
13 statement whether, in the opinion of the benefit director, the
14 sustainable business corporation acted in accordance with its
15 general, and any specific, public benefit purpose in all
16 material respects during the period covered by the report and
17 whether the directors and officers complied with sections
18 -6(a) and -8(a), respectively. If in the opinion of the
19 benefit director the sustainable business corporation or its
20 directors or officers failed to act according to the
21 requirements of this chapter, then the statement of the benefit
22 director shall include a description of the ways in which the



1 sustainable business corporation or its directors or officers
2 failed to act according to the requirements of this chapter. [Insert
3 from next page]

(d) A benefit director shall be independent of and shall
4 have no material relationship with the sustainable benefit
5 corporation.

6 § -8 Standard of conduct for officers. (a) Each
7 officer of a sustainable business corporation shall consider the
8 interests and factors described in section -6(a) in the
9 manner provided in that section when:

10 (1) The officer has discretion to act with respect to a
11 matter; and

12 (2) It reasonably appears to the officer that the matter
13 may have a material effect on:

14 (A) The creation of a general or specific public
15 benefit by the sustainable business corporation;

16 or

17 (B) Any of the interests or factors referred to in
18 section -6(a).

19 (b) An officer shall not be personally liable for monetary
20 damages for any action taken as an officer if the officer
21 performed the duties of the position in compliance with the
22 general standards of conduct pursuant to section 414-233.



Insert on page 11, line 2:

The benefit director's statement included in the final draft of the benefit report shall include formal responses to all questions, concerns, comments, and suggestions raised through the public comment period required by section -11.

1 § -9 Benefit officer. (a) A sustainable business
2 corporation may have an officer designated as the benefit
3 officer who shall have the authority and shall perform the
4 duties in the management of the sustainable business corporation
5 relating to the purpose of the corporation to create general or
6 specific public benefit as may be provided by or pursuant to the
7 bylaws or, in the absence of controlling provisions in the
8 bylaws, as may be determined by or pursuant to resolutions or
9 orders of the board of directors. If a sustainable business
10 corporation has a benefit officer, the duties of the benefit
11 officer shall include preparing the benefit report required by
12 section -11.

13 (b) A benefit officer shall be independent of and shall
14 have no material relationship with the sustainable benefit
15 corporation.

16 § -10 Right of action. The shareholders and directors
17 of a sustainable business corporation shall have the right to
18 bring direct or derivative claims to enforce corporate purposes
19 and the standards for directors as set forth in section
20 414-221(a) and shall have the right to bring direct or
21 derivative claims to enforce the general or specific public
22 benefit purposes of the sustainable business corporation and the



1 standard of conduct for directors pursuant to section

2 -6(a)(1).

3 § -11 Annual benefit report. (a) A sustainable
4 business corporation shall deliver to each shareholder an annual
5 benefit report including:

6 (1) A narrative description of:

7 (A) The ways in which the sustainable business
8 corporation pursued general public benefits
9 during the year and the extent to which general
10 public benefit was created;

11 (B) The ways in which the sustainable business
12 corporation pursued any specific public benefit
13 that the articles state as a purpose of the
14 sustainable business corporation and the extent
15 to which that specific public benefit was
16 created; and

17 (C) Any circumstances that have hindered the creation
18 by the sustainable business corporation of
19 general or specific public benefits;

20 (2) An assessment of the overall social and environmental
21 performance of the sustainable business corporation,
22 prepared in accordance with a third-party standard



1 under section -12 applied consistently with any
2 application of that standard in prior benefit reports
3 or accompanied by an explanation of the reasons for
4 any inconsistent application;

5 (3) The name of the benefit director and the benefit
6 officer, if any, and the address to which
7 correspondence to each of them may be directed;

8 (4) The compensation paid by the sustainable business
9 corporation during the year to each director in the
10 person's capacity as director;

11 (5) The name of each person who owns five per cent or more
12 of the outstanding shares of the sustainable business
13 corporation either beneficially to the extent known to
14 the sustainable business corporation or of record;

15 (6) The statement of the benefit director described in
16 section -7(c);

17 (7) A statement of any connection to the third-party
18 standard under section -12, or its directors,
19 officers, or material owners from the sustainable
20 business corporation, or its directors, officers, and
21 material owners, including any financial or governance
22 relationship that might materially affect the



1 credibility of the objective assessment of the third-
2 party standard; and

3 (8) A statement that, as a private corporation under the
4 direction of its board and accountable to its
5 shareholders and the articles and bylaws of the
6 sustainable benefit corporation, including those
7 governing the general or specific public benefit
8 purpose and the activities of the sustainable benefit
9 corporation, the sustainable benefit corporation and
10 its activities are subject to the oversight of the
11 board of the sustainable benefit corporation and are
12 not subject to the direct oversight, regulation, or
13 endorsement of any governmental body.

[Insert from next page]

14 (c) The benefit report shall be sent annually to each
15 shareholder within one hundred twenty days following the end of
16 the fiscal year of the sustainable business corporation.

17 (d) A sustainable business corporation shall post its most
18 recent benefit report on the public portion of its website, if
19 any, except that the compensation paid to directors and any
20 financial or proprietary information included in the benefit
21 report may be omitted from the benefit report as posted. If a
22 sustainable business corporation does not have a public website,



Insert to page 15, line 14:

A sustainable business corporation shall post a draft of its benefit report on the public section of its website, or make it otherwise available to the public, for a 60-day public comment period prior to final publication of the benefit report. The deadline for commentary shall be published in a publicly accessible manner.

1 it shall deliver a copy of its most recent benefit report upon
2 request and without charge to any person who requests a copy.

3 § -12 Third-party standard. A third-party standard for
4 purposes of defining, reporting, and assessing overall corporate
5 social and environmental performance of a sustainable business
6 corporation subject to this chapter shall be:

7 (1) Comprehensive in its assessment of the effect of the
8 business and its operations upon the interests listed
9 in section -6(a);

10 (2) Developed by an organization that is independent of
11 the sustainable business corporation; and

12 (3) Transparent because the following information is
13 publicly available:

14 (A) The criteria considered when measuring the
15 overall social and environmental performance of a
16 business, as well as the relative weightings of
17 those criteria;

18 (B) The identity of the directors, officers, any
19 material owners, and the governing body of the
20 organization that developed and controls
21 revisions to the standard;



- 1 (C) The process by which revisions to the standard
- 2 are made;
- 3 (D) The process by which changes to the membership of
- 4 the governing body of the organization that
- 5 developed and controls revisions to the standard
- 6 are made; and
- 7 (E) An accounting of the sources of financial support
- 8 for the organization that developed and controls
- 9 revisions to the standard, with sufficient detail
- 10 to disclose any relationships that could
- 11 reasonably be considered to present a potential
- 12 conflict of interest.

13 § -13 Ministerial role of department director. Section
14 414-16 shall apply to any findings made by a sustainable
15 business corporation."

16 SECTION 2. This Act shall take effect on July 1, 2050.

17



Report Title:

Business Regulation; Sustainable Business Corporations

Description:

Establishes an organizational and regulatory framework for sustainable benefits corporations. Effective July 1, 2050.
(SD3)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



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COMMITTEE ON ECONOMIC REVITALIZATION AND BUSINESS

Rep. Angus L. K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

HEARING

Tuesday, March 15, 2011

8:00 a.m.

Conference Room 312

Re: SB 298 Relating to Business Regulation.
STRONG SUPPORT

Dear Chair McKelvey, Vice Chair Choy, and Members of the Committee:

My name is Roger Epstein. I am the chairman of the tax department at the Cades Schutte law firm and have been a member of the Hawaii Bar Association for 38 years.

I strongly support passage of SB 298. I believe it is important that Hawaii join in the national effort to support and encourage business conducted with a commitment to serve its community, employees, suppliers, customers, and other constituents, as well as make a profit. Hawaii has long suffered from a reputation that it is an anti-business state. This bill will demonstrate that we are clearly in favor of businesses which operate in accordance with our aloha spirit.

I have been active with the World Business Academy for many years and am a founding member of its Hawaii branch, whose mission is to bring more community mindedness to business. I have personally met hundreds of CEO's and senior executives throughout the country, read business consultant books, and represented clients who want to operate their business as a good citizen and have created numerous working models. Now that there will be an entity that facilitates and denotes this approach, I believe it will see substantial use.

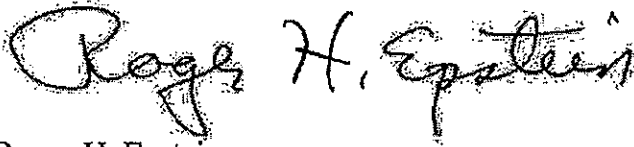
Hawaii was the last state in the country to provide for limited liability companies (LLCs), and I remember how businesses in Hawaii could not take advantage of this new vehicle for businesses (which are now more regularly used than corporations) during the years they could be used for business in other states, but not in Hawaii. I do not know the reasons for this, but I'd hate to see our community minded entrepreneurs and long-time business people similarly unable to use a sustainable business corporation to help our community.

In summary, a sustainable business corporation statute is an important element in fostering the movement for better business models. Certification from outside reputable organizations will allow our community to know who has organized themselves in this fashion, perhaps utilizing

their services more, and in the long run, perhaps changing our model of all business to be more community minded. This will greatly benefit us all.

Thank you for considering my testimony.

Sincerely,

A handwritten signature in black ink that reads "Roger H. Epstein". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Roger H. Epstein

Attachment: Washington Post article on Benefit Corporation

The Washington Post

'Benefit corporations' sign up

By Danielle Douglas
Capital Business Staff Writer
Monday, January 24, 2011; A11

It was not enough for Penny Jones-Napier to sell eco-friendly chew toys or fair-trade collars at her Takoma Park pet store, the Big Bad Woof. She wanted to make sure her customers could hold her accountable to the sustainable practices she preached.

That is why she jumped at the chance to incorporate her business as a "benefit corporation," a legal designation binding her to the socially conscious commitments written into her charter. Jones-Napier was one of 12 business owners to apply for the status on the day Maryland, the first state in the country to recognize this new class of company, opened registration in October.

"Your mission sets the tone for what you do every day in your business," she said. "If your mission is aligned with social ideals, which our company is, then this is a terrific fit."

Fifteen benefit corporations have been created in the three months since new legislation, signed into law in April, took effect. If the Maryland Small Business Development Center (MSBDC) has its way, dozens more soon will join those ranks. The organization, a partnership of the U.S. Small Business Administration and the University of Maryland at College Park, is hosting a free

workshop Wednesday on the new corporate structure.

"It's new ground, but it can play a more important role in compelling entrepreneurs to do social good while they make a profit," said Casey Wilson, retail industry and sustainability programs manager at the MSBDC.

At its core, benefit corporations blend the altruism of nonprofits with the business sensibilities of for-profit companies. These hybrid entities pay taxes and can have shareholders, without the risk of being sued for not maximizing profits. Companies can consider the needs of customers, workers, the community or environment and be well within their legal right.

A benefit corporation, for instance, could

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The Washington Post

'Benefit corporations' sign up

choose to buy from local vendors at a higher cost to reduce its carbon footprint, much as the Big Bad Woof does. The company, as a part of the incorporation, is required to file an annual report on contributions to the goals set forth in the charter and submit to an audit by an independent third party.

Laura E. Jordan, a lawyer with Capital Law Firm in the District, advises companies to seek out organizations with established standards to conduct the third-party review. The law does not specify acceptable auditors, but Jordan suggests that a company such as B-Lab, a Berwyn, Pa., outfit that certifies socially responsible businesses, would be a good choice. The nonprofit has awarded 371 private companies in 54 industries its B Corporation moniker - akin to a Good Housekeeping seal of approval.

There are no tax breaks or procurement incentives for benefit corporations in Maryland, but the classification offers a competitive advantage, said Jordan, who is helping more than 20 companies become benefit corporations. She pointed to a 2010 Cone study in which 61 percent of consumers surveyed had purchased a product because of the company's long-term commitment to a cause or issue.

"If you're feeding back into your customers goodwill, social justice, making sure your employees have sustainable wages, people

understand that and in turn will support you for it," Jones-Napier said.

Shortly after Maryland passed the benefit corporation legislation last year, Vermont got in on the act. Several other states, including New York and California, are considering similar bills. New York is one of 31 states with a "corporate constituency statute," which allows for the consideration of non-financial interests but lacks the full protection of the new law.

The workshop at MSBDC is part of a larger push by the organization to educate small businesses on socially and environmentally conscious practices. Wilson noted that next month the center will kick off a 16-part online training course on sustainability.

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COMMITTEE ON ECONOMIC REVITALIZATION AND BUSINESS

Rep. Angus L.K. McKelvey, Chair
Rep. Isaac W. Choy, Vice Chair

HEARING

Tuesday, March 15, 2011
8:00 a.m.
Conference Room 312

Re: SB 298/SD 3 Relating to Business Regulation
SUPPORT

Chair McKelvey, Vice Chair Choy, and Members of the Committee:

My name is Trever Asam and I am an attorney at Cades Schutte, a law firm in Honolulu. I strongly support passage of the legislation. The legislation creates a new form of entity that is for-profit in nature but that must additionally consider its impact on society.

The need for this legislation is rooted in the development of corporate law. Corporations have traditionally existed purely for the creation of profits for their shareholders. As a result, corporate law defines a corporate director's duty to shareholders in exclusively financial terms. Although a corporate director may consider non-financial factors, there is no obligation to do so.

SB 298 changes this paradigm, permitting those corporations who elect to be Sustainable Business Corporations to announce a commitment to the creation of social benefits. The legislation requires that a Sustainable Business Corporation include among its corporate purposes the creation of social benefits and to publish an annual report measuring its accomplishments against an independent third-party standard. Investors and consumers may thus determine for themselves whether the entity is living up to its promises. The market – and not the State – will determine whether a Sustainable Business Corporation is worthy of support.

Over the last two months, I have been involved in extensive discussions with the DCCA and the offices of Senators Baker, Hee, and Ihara regarding this legislation. Those discussions have led to the development of the current S.D. 3 and the attached Proposed H.D. 1. I have shared the Proposed H.D. 1 with the DCCA and it is my understanding that the DCCA will not be opposing the Proposed H.D. 1.

The legislation represents a new option for corporations in Hawaii. It is supported by businesses and the community. The time has come for this type of legislation in Hawaii, and I accordingly urge your support for SB298.

Mahalo,

Trever K. Asam

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RELATING TO BUSINESS REGULATION.

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19 (2) The person is related by blood, marriage, or adoption
20 to; is a party to a civil union with; is a reciprocal
21 beneficiary or household member of; or resides with an
22 officer other than a benefit officer or director of



1 the sustainable business corporation or any of its
2 subsidiaries; or

3 (3) The person or an association of which the person is a
4 director, officer, or manager or in which the person
5 owns beneficially or of record five per cent or more
6 of the outstanding equity interests or the outstanding
7 shares of the sustainable business corporation;
8 provided that percentage ownership in an association
9 shall be calculated as if all outstanding rights to
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15 (1) The holders of shares of every class or series shall
16 be entitled to vote on the corporate action regardless
17 of any limitation stated in the articles of
18 incorporation or bylaws on the voting rights of any
19 class or series; and

20 (2) The corporate action shall be approved by vote of the
21 shareholders of each class or series entitled to cast

1 at least two-thirds of the votes that all shareholders
2 of the class or series are entitled to cast thereon.

3 "Subsidiary" of a person means an association in which the
4 person owns beneficially or of record fifty per cent or more of
5 the outstanding equity interests; provided that a percentage of
6 ownership in an association shall be calculated as if all
7 outstanding rights to acquire equity interests in the
8 association had been exercised.

9 "Sustainable business corporation" means a domestic
10 corporation, ^{^ incorporated under chapter 414,} ~~as defined in section 414.3,~~ that has elected to ^{also} ~~^~~
11 become subject to this chapter and whose status as a sustainable
12 business corporation has not been terminated as provided in this
13 chapter.

14 "Third-party standard" means a standard for defining,
15 reporting, and assessing overall corporate social and
16 environmental performance that conforms to the requirements of
17 this chapter.

18 § -3 Election of a domestic corporation to become a ^{incorporated}
19 sustainable business corporation. (a) A domestic corporation ^{^ under}
20 may elect to become a sustainable business corporation under ^{chapter 414}
21 this chapter by including in its articles or amending its
22 articles to include a statement that the corporation is a



1 sustainable business corporation. An amendment pursuant to this
2 subsection shall not be effective unless it is adopted by at
3 least the minimum status vote.

4 (b) If a corporation that is not a sustainable business
5 corporation is a party to a merger, consolidation, or division,
6 or is the exchanging corporation in a share exchange, and the
7 surviving, new, or any resulting corporation in the merger,
8 consolidation, division, or share exchange is to be a
9 sustainable business corporation, then the plan of merger,
10 consolidation, division, or share exchange shall not be
11 effective unless it is adopted by the corporation by at least
12 the minimum status vote.

13 § -4 Termination of sustainable business corporation
14 status. (a) A sustainable business corporation may terminate
15 its status as such and cease to be subject to this chapter by
16 amending its articles to delete the statement that the
17 corporation is a sustainable business corporation. An amendment
18 pursuant to this subsection shall not be effective unless it is
19 adopted by at least the minimum status vote.

20 (b) If a plan of merger, consolidation, division, or share
21 exchange would have the effect of terminating the status of a
22 business corporation as a sustainable business corporation, the



1 plan shall not be effective unless it is adopted by at least the
2 minimum status vote.

3 § -5 Corporate purposes. (a) Every sustainable
4 business corporation shall have among its purposes the creation
5 of a general public benefit.

6 (b) In addition to the purposes described in subsection
7 (a), the articles of a sustainable business corporation may
8 identify one or more specific public benefits for which the
9 sustainable business corporation was created. The
10 identification of a specific public benefit under this
11 subsection does not limit the obligation of a sustainable
12 business corporation to create a general public benefit.
13 Allowable specific benefits for sustainable business
14 corporations subject to this chapter include:

- 15 (1) Providing low-income or underserved individuals or
16 communities with beneficial products or services;
17 (2) Promoting economic opportunity for individuals or
18 communities beyond the creation of jobs in the normal
19 course of business;
20 (3) Preserving the environment;
21 (4) Improving human health;



- 1 (5) Promoting the arts, sciences, or advancement of
- 2 knowledge;
- 3 (6) Increasing the flow of capital to entities with a
- 4 public benefit purpose; and
- 5 (7) The accomplishment of any other particular benefit for
- 6 society or the environment.

7 (c) The creation of general and specific public benefits
8 as provided in subsections (a) and (b) shall be in the best
9 interests of the sustainable business corporation.

10 (d) A sustainable business corporation may amend its
11 articles to add, amend, or delete the identification of a
12 specific public benefit for which the sustainable business
13 corporation was created. An amendment pursuant to this
14 subsection shall not be effective unless it is adopted by at
15 least the minimum status vote.

16 § -6 Standard of conduct for directors. (a) In
17 discharging the duties of their respective positions, the board
18 of directors, committees of the board, and individual directors
19 of a sustainable business corporation, in considering the best
20 interests of the sustainable business corporation:

- 21 (1) Shall consider the effects of any action of the
- 22 sustainable business corporation upon:



- 1 (A) The shareholders of the sustainable business
- 2 corporation; and
- 3 (B) The[^]general and specific public benefits set
- 4 forth in the sustainable business corporation's
- 5 purposes; and
- 6 (2) May consider:
- 7 (A) The employees and workforce of the sustainable
- 8 business corporation and its subsidiaries and
- 9 suppliers;
- 10 (B) The interests of customers as beneficiaries of
- 11 the general or specific public benefit purposes
- 12 of the sustainable business corporation;
- 13 (C) Community and societal considerations, including
- 14 those of any community in which offices or
- 15 facilities of the sustainable business
- 16 corporation or its subsidiaries or suppliers are
- 17 located;
- 18 (D) The local and global environment;
- 19 (E) The short-term and long-term interests of the
- 20 sustainable business corporation, including
- 21 benefits that may accrue to the sustainable
- 22 business corporation from its long-term plans and



1 the possibility that these interests may be best
2 served by the continued independence of the
3 sustainable business corporation;

4 (F) The ability of the sustainable business
5 corporation to accomplish its general public
6 benefit purpose and any specific public benefit
7 purpose;

8 (G) The resources, intent, and conduct of any person
9 seeking to acquire control of the corporation;
10 and

11 (H) Any other pertinent factors or the interests of
12 any other group that they deem appropriate.

13 (b) A director shall not be personally liable for monetary
14 damages for any action taken as a director if the director
15 performed the duties of the director's office in compliance with
16 the general standards of conduct pursuant to section 414-221.

17 § -7 **Benefit director.** (a) The board of directors of a
18 sustainable business corporation shall include one director who
19 shall be designated the "benefit director" and who shall have,
20 in addition to all of the powers, duties, rights, and immunities
21 of the other directors of the sustainable business corporation,



1 the powers, duties, rights, and immunities provided in this
2 section.

3 (b) The benefit director shall be elected pursuant to
4 sections 414-193 and 414-194 and may be removed in the manner
5 provided by sections 414-198 and 414-199. The benefit director
6 may serve concurrently as the benefit officer. The articles or
7 bylaws of a sustainable business corporation may prescribe
8 additional qualifications of the benefit director, provided that
9 the qualifications are consistent with this subsection.

10 (c) The benefit director shall prepare, and the
11 sustainable business corporation shall include in the annual
12 benefit report to shareholders required by section -11, a
13 statement whether, in the opinion of the benefit director, the
14 sustainable business corporation acted in accordance with its
15 general, and any specific, public benefit purpose in all
16 material respects during the period covered by the report and
17 whether the directors and officers complied with sections
18 -6(a) and -8(a), respectively. If in the opinion of the
19 benefit director the sustainable business corporation or its
20 directors or officers failed to act according to the
21 requirements of this chapter, then the statement of the benefit
22 director shall include a description of the ways in which the



1 sustainable business corporation or its directors or officers
2 failed to act according to the requirements of this chapter. [Insert
3 from next page]

(d) A benefit director shall be independent of and shall
4 have no material relationship with the sustainable benefit
5 corporation.

6 § -8 Standard of conduct for officers. (a) Each
7 officer of a sustainable business corporation shall consider the
8 interests and factors described in section -6(a) in the
9 manner provided in that section when:

10 (1) The officer has discretion to act with respect to a
11 matter; and

12 (2) It reasonably appears to the officer that the matter
13 may have a material effect on:

14 (A) The creation of a general or specific public
15 benefit by the sustainable business corporation;

16 or

17 (B) Any of the interests or factors referred to in
18 section -6(a).

19 (b) An officer shall not be personally liable for monetary
20 damages for any action taken as an officer if the officer
21 performed the duties of the position in compliance with the
22 general standards of conduct pursuant to section 414-233.



Insert on page 11, line 2:

The benefit director's statement included in the final draft of the benefit report shall include formal responses to all questions, concerns, comments, and suggestions raised through the public comment period required by section -11.

1 § -9 Benefit officer. (a) A sustainable business
2 corporation may have an officer designated as the benefit
3 officer who shall have the authority and shall perform the
4 duties in the management of the sustainable business corporation
5 relating to the purpose of the corporation to create general or
6 specific public benefit as may be provided by or pursuant to the
7 bylaws or, in the absence of controlling provisions in the
8 bylaws, as may be determined by or pursuant to resolutions or
9 orders of the board of directors. If a sustainable business
10 corporation has a benefit officer, the duties of the benefit
11 officer shall include preparing the benefit report required by
12 section -11.

13 (b) A benefit officer shall be independent of and shall
14 have no material relationship with the sustainable benefit
15 corporation.

16 § -10 Right of action. The shareholders and directors
17 of a sustainable business corporation shall have the right to
18 bring direct or derivative claims to enforce corporate purposes
19 and the standards for directors as set forth in section
20 414-221(a) and shall have the right to bring direct or
21 derivative claims to enforce the general or specific public
22 benefit purposes of the sustainable business corporation and the



1 standard of conduct for directors pursuant to section

2 -6(a)(1).

3 § -11 Annual benefit report. (a) A sustainable
4 business corporation shall deliver to each shareholder an annual
5 benefit report including:

6 (1) A narrative description of:

7 (A) The ways in which the sustainable business
8 corporation pursued general public benefits
9 during the year and the extent to which general
10 public benefit was created;

11 (B) The ways in which the sustainable business
12 corporation pursued any specific public benefit
13 that the articles state as a purpose of the
14 sustainable business corporation and the extent
15 to which that specific public benefit was
16 created; and

17 (C) Any circumstances that have hindered the creation
18 by the sustainable business corporation of
19 general or specific public benefits;

20 (2) An assessment of the overall social and environmental
21 performance of the sustainable business corporation,
22 prepared in accordance with a third-party standard



1 under section -12 applied consistently with any
2 application of that standard in prior benefit reports
3 or accompanied by an explanation of the reasons for
4 any inconsistent application;

5 (3) The name of the benefit director and the benefit
6 officer, if any, and the address to which
7 correspondence to each of them may be directed;

8 (4) The compensation paid by the sustainable business
9 corporation during the year to each director in the
10 person's capacity as director;

11 (5) The name of each person who owns five per cent or more
12 of the outstanding shares of the sustainable business
13 corporation either beneficially to the extent known to
14 the sustainable business corporation or of record;

15 (6) The statement of the benefit director described in
16 section -7(c);

17 (7) A statement of any connection to the third-party
18 standard under section -12, or its directors,
19 officers, or material owners from the sustainable
20 business corporation, or its directors, officers, and
21 material owners, including any financial or governance
22 relationship that might materially affect the



1 credibility of the objective assessment of the third-
2 party standard; and

3 (8) A statement that, as a private corporation under the
4 direction of its board and accountable to its
5 shareholders and the articles and bylaws of the
6 sustainable benefit corporation, including those
7 governing the general or specific public benefit
8 purpose and the activities of the sustainable benefit
9 corporation, the sustainable benefit corporation and
10 its activities are subject to the oversight of the
11 board of the sustainable benefit corporation and are
12 not subject to the direct oversight, regulation, or
13 endorsement of any governmental body.

[Insert from next page]

14 (c) The benefit report shall be sent annually to each
15 shareholder within one hundred twenty days following the end of
16 the fiscal year of the sustainable business corporation.

17 (d) A sustainable business corporation shall post its most
18 recent benefit report on the public portion of its website, if
19 any, except that the compensation paid to directors and any
20 financial or proprietary information included in the benefit
21 report may be omitted from the benefit report as posted. If a
22 sustainable business corporation does not have a public website,



Insert to page 15, line 14:

A sustainable business corporation shall post a draft of its benefit report on the public section of its website, or make it otherwise available to the public, for a 60-day public comment period prior to final publication of the benefit report. The deadline for commentary shall be published in a publicly accessible manner.

1 it shall deliver a copy of its most recent benefit report upon
2 request and without charge to any person who requests a copy.

3 § -12 Third-party standard. A third-party standard for
4 purposes of defining, reporting, and assessing overall corporate
5 social and environmental performance of a sustainable business
6 corporation subject to this chapter shall be:

7 (1) Comprehensive in its assessment of the effect of the
8 business and its operations upon the interests listed
9 in section -6(a);

10 (2) Developed by an organization that is independent of
11 the sustainable business corporation; and

12 (3) Transparent because the following information is
13 publicly available:

14 (A) The criteria considered when measuring the
15 overall social and environmental performance of a
16 business, as well as the relative weightings of
17 those criteria;

18 (B) The identity of the directors, officers, any
19 material owners, and the governing body of the
20 organization that developed and controls
21 revisions to the standard;



- 1 (C) The process by which revisions to the standard
- 2 are made;
- 3 (D) The process by which changes to the membership of
- 4 the governing body of the organization that
- 5 developed and controls revisions to the standard
- 6 are made; and
- 7 (E) An accounting of the sources of financial support
- 8 for the organization that developed and controls
- 9 revisions to the standard, with sufficient detail
- 10 to disclose any relationships that could
- 11 reasonably be considered to present a potential
- 12 conflict of interest.

13 § -13 Ministerial role of department director. Section
14 414-16 shall apply to any findings made by a sustainable
15 business corporation."

16 SECTION 2. This Act shall take effect on July 1, 2050.

17





Hawaii Venture Capital
Association
805 Kainui Drive
Kailua, Hawaii 96734
808-262-7329
<http://www.hvca.org>

DATE: March 14, 2011

HEARING DATE/TIME: Tuesday, March 15, 2011, 8:00AM Conference Room 312

TO: COMMITTEE ON ECONOMIC REVITALIZATION AND BUSINESS
Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair

FROM: Bill Spencer
President
Hawaii Venture Capital Association

RE: Testimony In STRONG SUPPORT for SB298 SD3 *Relating to Business Regulations*

Thank you for the opportunity to provide testimony in STRONG SUPPORT of SB 298 SD3. A Public Benefit Corporation is a form of organization that by its nature operates in a socially and environmentally responsible manner. Such companies are held to a high standard by their officers, directors and the public rather than the government. It provides transparency and accountability.

Such organizations are deemed worth of investment by organizations and individuals who seek to invest responsibly and consistently with their own important values. Socially responsible investing has become an important form of investing across the country as individuals seek to benefit from a "triple bottom line", where companies they invest in, not only provide a return on their investment, but do good work that benefits society as a whole.

I encourage you to support this bill and encourage the establishment of Public Benefit Corporations in Hawaii for the sake of consumers, entrepreneurs and investors who want to do the right thing and be recognized as entities who subscribe to a high standard in respect to their actions.

Sincerely,

Bill Spencer
President
Hawaii Venture Capital Association

TESTIMONY

Committee on Economic Revitalization and Business
Representative Angus L.K. McKelvey, Chair and
Representative Isaac W. Choy, Vice Chair

Tuesday, March 15, 2011
8:00 a.m. Conference Room 312

SB 298, SD3 Relating to Business Regulation

SB 298, SD1 Relating to Business Regulation

Dear Committee Members,

Thank you for hearing SB 298, SD1 today. This bill is an important way to help those businesses intending to do business in a sustainable way, with the three-fold goal of achieving profit, community good, and environmental well-being. Additionally, the bill provides an important avenue for signaling to businesses that Hawaii welcomes sustainable business organizations.

Providing emergent organizations a vehicle for systematically including community and environmental impact in their strategies and goals may have a significant positive impact on our economy. Research out of the University of Washington and Boston University (*Academy of Management Journal*, 42:5, 488 - 506) indicates that explicit inclusion of social and environmental goals in an organization's strategy is positively related to a firm's financial performance. Organizations that include social and environmental impact among their goals tend to be more financially successful than those that do not.

But, in spite of their intent to create positive outcomes for a range of stakeholders, case law has been interpreted to make corporations chiefly attentive to the financial interests of shareholders.

The Benefits Corporation or the "B Corp" was developed to allow companies to act in the interest of all stakeholders by creating a mechanism for annual reporting of their public benefits performance. The shareholders of "B Corps" have a duty to act in the interest of the public benefit they committed to create.

This idea has taken hold in many areas of the US. Maryland, Vermont and New Jersey. B Corp legislation has been introduced in seven other states.

This organizational structure facilitates the impact that entrepreneurs and others bring to their development of new sustainable ventures. As indicated by the research cited above, it may also enhance the success of these ventures, thereby contributing to the economic, social and environmental health of Hawaii. As the segment of the business community focused on sustainability grows nationally, this bill would welcome sustainable business in Hawaii and provide a standard form for organizations seeking to conduct business in a sustainable fashion.

I commend you for introducing such legislation and encourage you to enact it. This will be a significant stimulus to innovative companies of all types in our state.

Sincerely,

Scott J. Schroeder, PhD
Dean, School of Business
Chaminade University of Honolulu

From: Leigh-Ann Miyasato [leighann@efhawaii.org]
Sent: Monday, March 14, 2011 11:38 AM
To: ERBtestimony
Subject: Testimony on SB298, SD3

Entrepreneurs Foundation of Hawai'i
1000 Bishop Street, Suite 902
Honolulu, HI 96813
808.546.2288 x223 tel
808.546.2211 fax
leighann@efhawaii.org
www.efhawaii.org

March 14, 2011

COMMITTEE ON ECONOMIC REVITALIZATION AND BUSINESS

Rep. Angus L.K. McKelvey, Chair
Rep. Isaac W. Choy, Vice Chair

HEARING

Tuesday, March 15, 2011
8:00 a.m.
Conference Room 312

Re: Testimony in Support of SB298, SD3 Relating to Sustainable Business Corporations

Dear Chair McKelvey, Vice Chair Choy, and Members of the Committee:

As President of the Entrepreneurs Foundation of Hawai'i, a 501(c)(3) nonprofit organization that encourages entrepreneurial companies to engage in community service and philanthropy, I strongly support passage of SB298, SD3. The legislation would permit electing corporations to pursue both profit and the creation of public benefits, filling gaps in the law that currently interfere with these endeavors. By allowing companies to consider the interests of employees, the environment, or communities without being subject to lawsuits for harming the interests of shareholders, SB298, SD3 will encourage the formation and development of socially responsible enterprises. Social entrepreneurs will be able to build their companies, attract investors, and deliver both profits and public benefits to the Hawai'i community.

I strongly urge your support for SB298, SD3.

Sincerely yours,

/s/

Leigh-Ann K. Miyasato
President & Executive Director

From: Myah [myah.ely@gmail.com]
Sent: Monday, March 14, 2011 12:09 PM
To: ERBtestimony
Subject: SB298 SD3
Attachments: SB 298 SD3.pdf

TO: COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

Rep. Angus L.K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

RE: HEARING on SB298 SD3

DATE: Tuesday, March 15, 2011

TIME: 8:00 a.m. Conference Room 312

Representatives McKelvey, Choy, and and Members of the Committee,

I am writing in support of SB298 SD3, the bill that establishes a framework for the establishment of the Sustainable Business Corporation in Hawaii. There are many reasons why this type of corporate structure is good for Hawaii and good for business. Businesses that benefit the community by operating in a socially and environmentally responsible manner increase customer loyalty, which makes good business sense as they prove their worthiness to the public beyond merely the products and services they provide. Such practices have been shown in research to contribute positively to profitability. Under this legislation, these entities will formally agree to operate for the public benefit as follows:

- (1) Providing low-income or underserved individuals or communities with beneficial products or services;
- (2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
- (3) Preserving the environment;
- (4) Improving human health;
- (5) Promoting the arts, sciences, or advancement of knowledge;
- (6) Increasing the flow of capital to entities with a public benefit purpose; and
- (7) The accomplishment of any other particular benefit for society or the environment.

Sustainable business corporations exist to serve the interests of multiple stakeholders: shareholders, employees, customers, communities, and the environment. In demonstrating care for these stakeholders, I believe that public benefit corporations will be more successful businesses, which will encourage the entire business community to consider similar practices.

As this is a voluntary standard, obviously it is meant for those conscientious businesses that wish to embrace this high level of transparency and accountability. I urge the Committee to enable such businesses to strive for this level of integrity, and as such I urge you to support SB298 SD3 to raise the bar for business standards here in Hawaii.

Mahalo,

Myah Ely

A BILL FOR AN ACT

RELATING TO BUSINESS REGULATION.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 SUSTAINABLE BUSINESS CORPORATIONS

6 § -1 Purpose and findings. This chapter authorizes a
7 designation and code of conduct for a business corporation to
8 offer entrepreneurs and investors the option to build and invest
9 in businesses that operate in a socially and environmentally
10 sustainable manner. Enforcement of those responsibilities comes
11 not from governmental oversight, but rather from new provisions
12 on transparency and accountability included in this chapter.

13 § -2 Definitions. As used in this chapter:

14 "Benefit director" means the director designated as the
15 benefit director of a sustainable business corporation under
16 section -7.



1 "Benefit officer" means the individual designated as the
2 benefit officer of a sustainable business corporation under
3 section -9.

4 "General public benefit" means a material positive impact
5 on society and the environment, taken as a whole and as measured
6 by a third-party standard under section -12, from the
7 business and operations of a sustainable business corporation.

8 "Independent" means having no material relationship with a
9 sustainable business corporation or any of its subsidiaries.

10 "Material owner" means a shareholder who holds either
11 beneficially or of record five per cent or more of the
12 outstanding shares of a sustainable business corporation.

13 "Material relationship" means a relationship between a
14 person and a sustainable business corporation where:

15 (1) The person is, or has been within the last three
16 years, an employee other than a benefit officer of the
17 sustainable business corporation or any of its
18 subsidiaries;

19 (2) The person is related by blood, marriage, or adoption
20 to; is a party to a civil union with; is a reciprocal
21 beneficiary or household member of; or resides with an
22 officer other than a benefit officer or director of



1 the sustainable business corporation or any of its
2 subsidiaries; or
3 (3) The person or an association of which the person is a
4 director, officer, or manager or in which the person
5 owns beneficially or of record five per cent or more
6 of the outstanding equity interests or the outstanding
7 shares of the sustainable business corporation;
8 provided that percentage ownership in an association
9 shall be calculated as if all outstanding rights to
10 acquire equity interests in the association had been
11 exercised.

12 "Minimum status vote" means that in addition to any other
13 approval or vote required by this chapter or the bylaws adopted
14 by the shareholders:

15 (1) The holders of shares of every class or series shall
16 be entitled to vote on the corporate action regardless
17 of any limitation stated in the articles of
18 incorporation or bylaws on the voting rights of any
19 class or series; and

20 (2) The corporate action shall be approved by vote of the
21 shareholders of each class or series entitled to cast



1 at least two-thirds of the votes that all shareholders
2 of the class or series are entitled to cast thereon.

3 "Subsidiary" of a person means an association in which the
4 person owns beneficially or of record fifty per cent or more of
5 the outstanding equity interests; provided that a percentage of
6 ownership in an association shall be calculated as if all
7 outstanding rights to acquire equity interests in the
8 association had been exercised.

9 "Sustainable business corporation" means a domestic
10 corporation, ^{^ incorporated under chapter 414,} ~~as defined in section 414.3,~~ that has elected to ^{also} ~~^~~
11 become subject to this chapter and whose status as a sustainable
12 business corporation has not been terminated as provided in this
13 chapter.

14 "Third-party standard" means a standard for defining,
15 reporting, and assessing overall corporate social and
16 environmental performance that conforms to the requirements of
17 this chapter.

18 § -3 Election of a domestic corporation to become a ^{incorporated}
19 sustainable business corporation. (a) A domestic corporation ^{^ under}
20 may elect to become a sustainable business corporation under ^{chapter 414}
21 this chapter by including in its articles or amending its
22 articles to include a statement that the corporation is a



1 sustainable business corporation. An amendment pursuant to this
2 subsection shall not be effective unless it is adopted by at
3 least the minimum status vote.

4 (b) If a corporation that is not a sustainable business
5 corporation is a party to a merger, consolidation, or division,
6 or is the exchanging corporation in a share exchange, and the
7 surviving, new, or any resulting corporation in the merger,
8 consolidation, division, or share exchange is to be a
9 sustainable business corporation, then the plan of merger,
10 consolidation, division, or share exchange shall not be
11 effective unless it is adopted by the corporation by at least
12 the minimum status vote.

13 § -4 Termination of sustainable business corporation
14 status. (a) A sustainable business corporation may terminate
15 its status as such and cease to be subject to this chapter by
16 amending its articles to delete the statement that the
17 corporation is a sustainable business corporation. An amendment
18 pursuant to this subsection shall not be effective unless it is
19 adopted by at least the minimum status vote.

20 (b) If a plan of merger, consolidation, division, or share
21 exchange would have the effect of terminating the status of a
22 business corporation as a sustainable business corporation, the



1 plan shall not be effective unless it is adopted by at least the
2 minimum status vote.

3 § -5 Corporate purposes. (a) Every sustainable
4 business corporation shall have among its purposes the creation
5 of a general public benefit.

6 (b) In addition to the purposes described in subsection
7 (a), the articles of a sustainable business corporation may
8 identify one or more specific public benefits for which the
9 sustainable business corporation was created. The
10 identification of a specific public benefit under this
11 subsection does not limit the obligation of a sustainable
12 business corporation to create a general public benefit.
13 Allowable specific benefits for sustainable business
14 corporations subject to this chapter include:

- 15 (1) Providing low-income or underserved individuals or
16 communities with beneficial products or services;
17 (2) Promoting economic opportunity for individuals or
18 communities beyond the creation of jobs in the normal
19 course of business;
20 (3) Preserving the environment;
21 (4) Improving human health;



- 1 (5) Promoting the arts, sciences, or advancement of
- 2 knowledge;
- 3 (6) Increasing the flow of capital to entities with a
- 4 public benefit purpose; and
- 5 (7) The accomplishment of any other particular benefit for
- 6 society or the environment.

7 (c) The creation of general and specific public benefits
8 as provided in subsections (a) and (b) shall be in the best
9 interests of the sustainable business corporation.

10 (d) A sustainable business corporation may amend its
11 articles to add, amend, or delete the identification of a
12 specific public benefit for which the sustainable business
13 corporation was created. An amendment pursuant to this
14 subsection shall not be effective unless it is adopted by at
15 least the minimum status vote.

16 § -6 Standard of conduct for directors. (a) In
17 discharging the duties of their respective positions, the board
18 of directors, committees of the board, and individual directors
19 of a sustainable business corporation, in considering the best
20 interests of the sustainable business corporation:

- 21 (1) Shall consider the effects of any action of the
- 22 sustainable business corporation upon:



- 1 (A) The shareholders of the sustainable business
- 2 corporation; and
- 3 **accomplishment of**
- 4 (B) The general and specific public benefits set
- 5 forth in the sustainable business corporation's
- 6 purposes; and
- 7 (2) May consider:
- 8 (A) The employees and workforce of the sustainable
- 9 business corporation and its subsidiaries and
- 10 suppliers;
- 11 (B) The interests of customers as beneficiaries of
- 12 the general or specific public benefit purposes
- 13 of the sustainable business corporation;
- 14 (C) Community and societal considerations, including
- 15 those of any community in which offices or
- 16 facilities of the sustainable business
- 17 corporation or its subsidiaries or suppliers are
- 18 located;
- 19 (D) The local and global environment;
- 20 (E) The short-term and long-term interests of the
- 21 sustainable business corporation, including
- 22 benefits that may accrue to the sustainable
- business corporation from its long-term plans and



1 the possibility that these interests may be best
2 served by the continued independence of the
3 sustainable business corporation;

4 (F) The ability of the sustainable business
5 corporation to accomplish its general public
6 benefit purpose and any specific public benefit
7 purpose;

8 (G) The resources, intent, and conduct of any person
9 seeking to acquire control of the corporation;
10 and

11 (H) Any other pertinent factors or the interests of
12 any other group that they deem appropriate.

13 (b) A director shall not be personally liable for monetary
14 damages for any action taken as a director if the director
15 performed the duties of the director's office in compliance with
16 the general standards of conduct pursuant to section 414-221.

17 § -7 **Benefit director.** (a) The board of directors of a
18 sustainable business corporation shall include one director who
19 shall be designated the "benefit director" and who shall have,
20 in addition to all of the powers, duties, rights, and immunities
21 of the other directors of the sustainable business corporation,



1 the powers, duties, rights, and immunities provided in this
2 section.

3 (b) The benefit director shall be elected pursuant to
4 sections 414-193 and 414-194 and may be removed in the manner
5 provided by sections 414-198 and 414-199. The benefit director
6 may serve concurrently as the benefit officer. The articles or
7 bylaws of a sustainable business corporation may prescribe
8 additional qualifications of the benefit director, provided that
9 the qualifications are consistent with this subsection.

10 (c) The benefit director shall prepare, and the
11 sustainable business corporation shall include in the annual
12 benefit report to shareholders required by section -11, a
13 statement whether, in the opinion of the benefit director, the
14 sustainable business corporation acted in accordance with its
15 general, and any specific, public benefit purpose in all
16 material respects during the period covered by the report and
17 whether the directors and officers complied with sections
18 -6(a) and -8(a), respectively. If in the opinion of the
19 benefit director the sustainable business corporation or its
20 directors or officers failed to act according to the
21 requirements of this chapter, then the statement of the benefit
22 director shall include a description of the ways in which the



1 sustainable business corporation or its directors or officers
2 failed to act according to the requirements of this chapter. [Insert
3 from next page]

(d) A benefit director shall be independent of and shall
4 have no material relationship with the sustainable benefit
5 corporation.

6 § -8 Standard of conduct for officers. (a) Each
7 officer of a sustainable business corporation shall consider the
8 interests and factors described in section -6(a) in the
9 manner provided in that section when:

10 (1) The officer has discretion to act with respect to a
11 matter; and

12 (2) It reasonably appears to the officer that the matter
13 may have a material effect on:

14 (A) The creation of a general or specific public
15 benefit by the sustainable business corporation;
16 or

17 (B) Any of the interests or factors referred to in
18 section -6(a).

19 (b) An officer shall not be personally liable for monetary
20 damages for any action taken as an officer if the officer
21 performed the duties of the position in compliance with the
22 general standards of conduct pursuant to section 414-233.



Insert on page 11, line 2:

The benefit director's statement included in the final draft of the benefit report shall include formal responses to all questions, concerns, comments, and suggestions raised through the public comment period required by section -11.

1 § -9 Benefit officer. (a) A sustainable business
2 corporation may have an officer designated as the benefit
3 officer who shall have the authority and shall perform the
4 duties in the management of the sustainable business corporation
5 relating to the purpose of the corporation to create general or
6 specific public benefit as may be provided by or pursuant to the
7 bylaws or, in the absence of controlling provisions in the
8 bylaws, as may be determined by or pursuant to resolutions or
9 orders of the board of directors. If a sustainable business
10 corporation has a benefit officer, the duties of the benefit
11 officer shall include preparing the benefit report required by
12 section -11.

13 (b) A benefit officer shall be independent of and shall
14 have no material relationship with the sustainable benefit
15 corporation.

16 § -10 Right of action. The shareholders and directors
17 of a sustainable business corporation shall have the right to
18 bring direct or derivative claims to enforce corporate purposes
19 and the standards for directors as set forth in section
20 414-221(a) and shall have the right to bring direct or
21 derivative claims to enforce the general or specific public
22 benefit purposes of the sustainable business corporation and the



1 standard of conduct for directors pursuant to section

2 -6(a)(1).

3 § -11 Annual benefit report. (a) A sustainable

4 business corporation shall deliver to each shareholder an annual

5 benefit report including:

6 (1) A narrative description of:

7 (A) The ways in which the sustainable business
8 corporation pursued general public benefits
9 during the year and the extent to which general
10 public benefit was created;

11 (B) The ways in which the sustainable business
12 corporation pursued any specific public benefit
13 that the articles state as a purpose of the
14 sustainable business corporation and the extent
15 to which that specific public benefit was
16 created; and

17 (C) Any circumstances that have hindered the creation
18 by the sustainable business corporation of
19 general or specific public benefits;

20 (2) An assessment of the overall social and environmental
21 performance of the sustainable business corporation,
22 prepared in accordance with a third-party standard



1 under section -12 applied consistently with any
2 application of that standard in prior benefit reports
3 or accompanied by an explanation of the reasons for
4 any inconsistent application;

5 (3) The name of the benefit director and the benefit
6 officer, if any, and the address to which
7 correspondence to each of them may be directed;

8 (4) The compensation paid by the sustainable business
9 corporation during the year to each director in the
10 person's capacity as director;

11 (5) The name of each person who owns five per cent or more
12 of the outstanding shares of the sustainable business
13 corporation either beneficially to the extent known to
14 the sustainable business corporation or of record;

15 (6) The statement of the benefit director described in
16 section -7(c);

17 (7) A statement of any connection to the third-party
18 standard under section -12, or its directors,
19 officers, or material owners from the sustainable
20 business corporation, or its directors, officers, and
21 material owners, including any financial or governance
22 relationship that might materially affect the



1 credibility of the objective assessment of the third-
2 party standard; and

3 (8) A statement that, as a private corporation under the
4 direction of its board and accountable to its
5 shareholders and the articles and bylaws of the
6 sustainable benefit corporation, including those
7 governing the general or specific public benefit
8 purpose and the activities of the sustainable benefit
9 corporation, the sustainable benefit corporation and
10 its activities are subject to the oversight of the
11 board of the sustainable benefit corporation and are
12 not subject to the direct oversight, regulation, or
13 endorsement of any governmental body.

[Insert from next page]

14 (c) The benefit report shall be sent annually to each
15 shareholder within one hundred twenty days following the end of
16 the fiscal year of the sustainable business corporation.

17 (d) A sustainable business corporation shall post its most
18 recent benefit report on the public portion of its website, if
19 any, except that the compensation paid to directors and any
20 financial or proprietary information included in the benefit
21 report may be omitted from the benefit report as posted. If a
22 sustainable business corporation does not have a public website,



Insert to page 15, line 14:

A sustainable business corporation shall post a draft of its benefit report on the public section of its website, or make it otherwise available to the public, for a 60-day public comment period prior to final publication of the benefit report. The deadline for commentary shall be published in a publicly accessible manner.

1 it shall deliver a copy of its most recent benefit report upon
2 request and without charge to any person who requests a copy.

3 § -12 Third-party standard. A third-party standard for
4 purposes of defining, reporting, and assessing overall corporate
5 social and environmental performance of a sustainable business
6 corporation subject to this chapter shall be:

7 (1) Comprehensive in its assessment of the effect of the
8 business and its operations upon the interests listed
9 in section -6(a);

10 (2) Developed by an organization that is independent of
11 the sustainable business corporation; and

12 (3) Transparent because the following information is
13 publicly available:

14 (A) The criteria considered when measuring the
15 overall social and environmental performance of a
16 business, as well as the relative weightings of
17 those criteria;

18 (B) The identity of the directors, officers, any
19 material owners, and the governing body of the
20 organization that developed and controls
21 revisions to the standard;



- 1 (C) The process by which revisions to the standard
- 2 are made;
- 3 (D) The process by which changes to the membership of
- 4 the governing body of the organization that
- 5 developed and controls revisions to the standard
- 6 are made; and
- 7 (E) An accounting of the sources of financial support
- 8 for the organization that developed and controls
- 9 revisions to the standard, with sufficient detail
- 10 to disclose any relationships that could
- 11 reasonably be considered to present a potential
- 12 conflict of interest.

13 § -13 Ministerial role of department director. Section
14 414-16 shall apply to any findings made by a sustainable
15 business corporation."

16 SECTION 2. This Act shall take effect on July 1, 2050.

17



Report Title:

Business Regulation; Sustainable Business Corporations

Description:

Establishes an organizational and regulatory framework for sustainable benefits corporations. Effective July 1, 2050.
(SD3)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



From: Chenoa Farnsworth [chenoa@hawaiiangels.org]
Sent: Monday, March 14, 2011 10:12 AM
To: ERBtestimony
Subject: Support of SB298 SD3

TO: COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS
Rep. Angus L.K. McKelvey, Chair
Rep. Isaac W. Choy, Vice Chair

RE: HEARING on SB298 SD3
DATE: Tuesday, March 15, 2011
TIME: 8:00 a.m. Conference Room 312

Representatives McKelvey, Choy, and Members of the Committee,

I am writing in support of SB298 SD3, the bill that establishes a framework for the establishment of the Sustainable Business Corporation in Hawaii. There are many reasons why this type of corporate structure is good for Hawaii and good for business. Businesses that benefit the community by operating in a socially and environmentally responsible manner increase customer loyalty, which makes good business sense as they prove their worthiness to the public beyond merely the products and services they provide. Such practices have been shown in research to contribute positively to profitability. Under this legislation, these entities will formally agree to operate for the public benefit as follows:

- (1) Providing low-income or underserved individuals or communities with beneficial products or services;
- (2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
- (3) Preserving the environment;
- (4) Improving human health;
- (5) Promoting the arts, sciences, or advancement of knowledge;
- (6) Increasing the flow of capital to entities with a public benefit purpose; and
- (7) The accomplishment of any other particular benefit for society or the environment.

Sustainable business corporations exist to serve the interests of multiple stakeholders: shareholders, employees, customers, communities, and the environment. In demonstrating care for these stakeholders, I believe that public benefit corporations will be more successful businesses, which will encourage the entire business community to consider similar practices.

As this is a voluntary standard, obviously it is meant for those conscientious businesses that wish to embrace this high level of transparency and accountability. I urge the Committee to enable such businesses to strive for this level of integrity, and as such I urge you to support SB298 SD3 to raise the bar for business standards here in Hawaii.

Mahalo,

Chenoa Farnsworth
Managing Director
Hawaii Angels
900 Fort Street Mall, Suite 1570
Honolulu, HI 96813

From: Michael Kramer [michael@naturalinvesting.com]
Sent: Monday, March 14, 2011 6:47 AM
To: ERBtestimony
Subject: Testimony for SB298 SD3 to be heard Tuesday, March 15, 8:00am

TO: COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS
Rep. Angus L.K. McKelvey, Chair
Rep. Isaac W. Choy, Vice Chair

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DATE: Tuesday, March 15, 2011
TIME: 8:00 a.m. Conference Room 312

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Mahalo,

Michael Kramer
Board Member, Sustainability Association of Hawaii
Founder, Hawaii Alliance for a Local Economy
Founder, Kuleana Green Business Program, Kona-Kohala Chamber of Commerce
Managing Partner, Natural Investments LLC

TESTIMONY

Committee on Economic Revitalization and Business
Representative Angus L.K. McKelvey, Chair and
Representative Isaac W. Choy, Vice Chair

Tuesday, March 15, 2011
8:00 a.m. Conference Room 312

SB 298, SD3 Relating to Business Regulation

Dear Committee Members,

Thank you for hearing SB 298, SD3 today. This bill is an innovative way to help create more jobs in Hawai'i. It will create a way for investors who wish to commit funds to businesses with confidence that they will pursue profit in ways that serve values such as environmental and social responsibility. There are investors who want to make such investments in Hawai'i and business opportunities that meet those criteria. It is in the best interest of the state economy that they should have a mechanism to do so.

All too often, in spite of such desires, case law has been interpreted to make corporations primarily attentive to financial interests – often at the expense of social and environmental impact. Sometimes, businesses have felt compelled to organize as non-profits to avoid running afoul of their fiduciary responsibilities, but the non-profit format is very restrictive and does not allow for equity investment.

The Benefits Corporation or “B Corp” was developed to provide a way to embed the intentions of the investors and founding entrepreneurs in the bylaws of the corporation so everyone is notified and obligated to pursue the goals for which the corporation was formed. The shareholders of “B Corps” have a duty to act in the interest of the public benefit they committed to create.

This idea has taken hold in many areas of the US. Maryland, Vermont and New Jersey have enacted “B Corp” style legislation. It has been introduced in seven other states. It can benefit Hawai'i as well by attracting capital and socially responsible entrepreneurs to the state. I encourage you to pass this legislation.

Sincerely,

Gifford Pinchot III, President
Bainbridge Graduate Institute

SB298, SD3 Relating to Business Regulations

The American Sustainable Business Council (ASBC), formed less than two years ago and representing over 65,000 companies throughout the nation, has helped advance “B-Corps” legislation in Maryland, Vermont and New Jersey. We are delighted that Hawaii is moving closer to joining this small group of states who are leading the way in support of legislation that will help businesses meet higher standards of corporate purpose, accountability and transparency.

We would like to reiterate our firm belief that the idea of the Sustainable Business Corporations fits in very well with Hawaii’s culture of ‘Aloha.’

SB298, SD3 Relating to Business Regulations builds on the principle of doing business in a manner that is respectful of the environment and the community while generating profit. A Sustainable Business Corporation is a new corporate entity that offers entrepreneurs and investors the option to build and invest in businesses that proactively commit to the triple bottom line: people, planet and profits.

In a traditional corporation, fiduciary duty focuses exclusively on increasing shareholder profits. In the case of Sustainable Business Corporations, fiduciary duty is redefined by stating that the creation of public benefit is in the best interests of the Corporation. This allows corporate officers to define other goals beyond just making a profit and then gives investors the power to require those officers to make decisions that reflect those goals. These goals can be community or environmental, which have their own intrinsic value, and also help to build a company’s brand and customer loyalty.

We believe that business has a role to play building a financially vibrant economy, while also protecting our environment and the quality of life in our communities.

We are confident that Sustainable Business Corporations will make Hawaii a more attractive place to do business. Businesses across the country are finding ways to do well while helping our environment and society at large. States that welcome these new businesses will benefit. We urge you to reinforce Hawaii’s message of doing business with aloha by passing SB298, SD3.

Respectfully yours

Richard Eidlin

Issues Director, American Sustainable Business Council

TESTIMONY

Committee: ERB Room #312
Hearing Date: 3/15/2011 8:00AM
SB298SD3

Testimony in Strong Support of SB298SD3 with amendments.

Testifier: Gary Hooser, speaking as an individual

Honorable Committee Chair Representative McKelvey, Vice Chair Choy and members of the House Committee on Economic Recovery and Business:

As a former business owner who has also been actively involved in broad-based community, environmental and sustainability organizations – I am in strong support of the passage of SB298SD3 establishing benefit corporations. The establishment of a Benefit Corporation category provides a uniform legal framework that will attract and support new businesses in Hawaii seeking to grow enterprises focused on supporting clear social, environmental and other important public benefits to our community.

Please review the attached Washington Post article that describes the State of Maryland's experience and explains further the economic development potential supporting the passage of Benefit Corporation legislation in Hawaii.

There are few legislative initiatives that come before the legislature that offer forward thinking proposals that meld both good business practices and good social policy – SB298SD3 is such a proposal and while the upside potential of supporting new and positive business enterprise in Hawaii is significant, the cost to the State budget itself is zero.

For these reasons and others, I strongly encourage the Committee to pass with amendments if possible to strengthen the requirements that Directors shall consider a broad set of sustainable, responsible and public benefit criteria.

Gary Hooser
808-652-4279

garylhooser@hotmail.com
5685 Ohelo Road, Kapaa Hawaii 96746

'Benefit corporations' sign up

By Danielle Douglas
Capital Business Staff Writer
Monday, January 24, 2011; A11

It was not enough for Pennye Jones-Napier to sell eco-friendly chew toys or fair-trade collars at her Takoma Park pet store, the Big Bad Woof. She wanted to make sure her customers could hold her accountable to the sustainable practices she preached.

That is why she jumped at the chance to incorporate her business as a "benefit corporation," a legal designation binding her to the socially conscious commitments written into her charter. Jones-Napier was one of 12 business owners to apply for the status on the day Maryland, the first state in the country to recognize this new class of company, opened registration in October.

"Your mission sets the tone for what you do every day in your business," she said. "If your mission is aligned with social ideals, which our company is, then this is a terrific fit."

Fifteen benefit corporations have been created in the three months since new legislation, signed into law in April, took effect. If the Maryland Small Business Development Center (MSBDC) has its way, dozens more soon will join those ranks. The organization, a partnership of the U.S. Small Business Administration and the University of Maryland at College Park, is hosting a free


workshop Wednesday on the new corporate structure.

"It's new ground, but it can play a more important role in compelling entrepreneurs to do social good while they make a profit," said Casey Wilson, retail industry and sustainability programs manager at the MSBDC.

At its core, benefit corporations blend the altruism of nonprofits with the business sensibilities of for-profit companies. These hybrid entities pay taxes and can have shareholders, without the risk of being sued for not maximizing profits. Companies can consider the needs of customers, workers, the community or environment and be well within their legal right.

A benefit corporation, for instance, could

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http://www.washingtonpost.com/wp-dyn/content/article/2011/01/23/AR2011012303690_pf.html

'Benefit corporations' sign up

choose to buy from local vendors at a higher cost to reduce its carbon footprint, much as the Big Bad Woof does. The company, as a part of the incorporation, is required to file an annual report on contributions to the goals set forth in the charter and submit to an audit by an independent third party.

Laura E. Jordan, a lawyer with Capital Law Firm in the District, advises companies to seek out organizations with established standards to conduct the third-party review. The law does not specify acceptable auditors, but Jordan suggests that a company such as B-Lab, a Berwyn, Pa., outfit that certifies socially responsible businesses, would be a good choice. The nonprofit has awarded 371 private companies in 54 industries its B Corporation moniker - akin to a Good Housekeeping seal of approval.

There are no tax breaks or procurement incentives for benefit corporations in Maryland, but the classification offers a competitive advantage, said Jordan, who is helping more than 20 companies become benefit corporations. She pointed to a 2010 Cone study in which 61 percent of consumers surveyed had purchased a product because of the company's long-term commitment to a cause or issue.

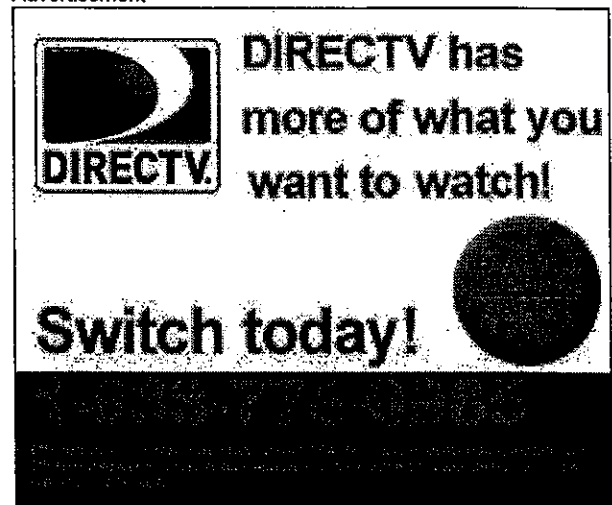
"If you're feeding back into your customers goodwill, social justice, making sure your employees have sustainable wages, people

understand that and in turn will support you for it," Jones-Napier said.

Shortly after Maryland passed the benefit corporation legislation last year, Vermont got in on the act. Several other states, including New York and California, are considering similar bills. New York is one of 31 states with a "corporate constituency statute," which allows for the consideration of non-financial interests but lacks the full protection of the new law.

The workshop at MSBDC is part of a larger push by the organization to educate small businesses on socially and environmentally conscious practices. Wilson noted that next month the center will kick off a 16-part online training course on sustainability.

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The advertisement features the DIRECTV logo on the left, which consists of a stylized 'D' with a white crescent shape inside a black square. To the right of the logo, the text reads "DIRECTV has more of what you want to watch!" in a bold, sans-serif font. Below this, the phrase "Switch today!" is written in a larger, bold font. To the right of "Switch today!" is a solid black circle. The entire advertisement is enclosed in a thin black border.

http://www.washingtonpost.com/wp-dyn/content/article/2011/01/23/AR2011012303690_pf.html

COMMITTEE ON ECONOMIC REVITALIZATION AND BUSINESS

Testimony in Support of SB 298

To: Angus L.K. McKelvey, Chair, Isaac W. Choy, Vice Chair & Members of The Committee on Economic Revitalization and Business

From: Justin Levinson

Dear Chair McKelvey, Vice Chair Choy, and Members of the Committee:

I write in support of SB 298. I am an attorney who previously practiced corporate law and am now Associate Professor of Law at the William S. Richardson School of Law. I teach several corporate law classes, including Business Associations, Corporate Finance, and High Growth Entrepreneurship. This testimony, I should note, is being written in my individual capacity rather than as a representative of the University. To summarize, I believe that SB 1462 is a good idea for many reasons, including some that are business based, some legally focused, and some community centered. Due to my area of expertise, I will focus on the key legal reasons.

SB 298 would solve two major legal challenges that currently provide hurdles to businesses that have community-centered missions. First, it would allow a corporation to explicitly make a commitment (in its articles of incorporation and beyond) that it will pursue a certain socially beneficial mission. Currently, in most states corporations can only take steps to benefit the community if those steps can be justified as providing at least some indirect business benefit to the corporation. This bill would thus allow businesses to be explicit about their socially beneficial missions without risking lawsuit from shareholders concerned about losing profits. This is an important step as current law can deter officers and directors from taking steps to benefit society (because of fears of a lawsuit). Second, this bill would provide a cause of action for shareholders of these corporations to hold directors and officers accountable for maintaining their societal commitments. Thus, investors in these new corporations could ensure that the corporation is actually pursuing and achieving its mission.

Hawaii has not typically been known as a leader or innovator in corporate laws, but becoming the third or fourth state to enact sustainable benefit corporation legislation would certainly help our national reputation in the social entrepreneurship community.

Thank you kindly for considering my testimony.

Sincerely,

Justin D. Levinson

Kaneohe, HI

Dear Committee Members,

Thank you for hearing SB 298, SD3 today. This bill is an innovative way to help those companies who are believers in the so-called Triple Bottom Line. While none dispute the importance of profits, most companies also recognize the need to address the social and environmental impact of their activities.

All too often, in spite of such desires, case law has been interpreted to make corporations primarily attentive to financial interests – often at the expense of social and environmental impact. Sometimes, companies have felt compelled to organize as non-profits to avoid running afoul of their fiduciary responsibilities.

The Sustainable Business Corporation (SBC) was developed to allow companies to act in the interest of all stakeholders by creating a mechanism for annual reporting of their public sustainability performance. The shareholders of SBC's have a duty to act in the interest of the public sustainable objectives they committed to create.

This idea has taken hold in many areas of the US. New Jersey, Maryland and Vermont have enacted similar legislation and bills have been introduced in seven other states. This organizational structure facilitates the excitement and enthusiasm that young entrepreneurs and others bring to their endless pursuit of new sustainable ventures.

I commend you for introducing such legislation and wholeheartedly encourage you to enact it. This will be a significant stimulus to innovative companies of all types.

Sincerely,

John Webster, Director, The Hogan Entrepreneurs

Chaminade University

"Doing Business Things that Make Social Sense and Doing Social Things that Make Business Sense"

**TESTIMONY OF
WILLIAM H. CLARK, JR.
ON
SENATE BILL 298
BEFORE
HAWAII STATE LEGISLATURE
HOUSE COMMITTEE ON
ECONOMIC REVITALIZATION & BUSINESS**

March 15, 2011

Representative McKelvey and members of the Committee:

My name is William H. Clark, Jr. I appreciate this opportunity to provide testimony in support of S.B. 298 regarding sustainable business corporations.

I am a partner in Drinker Biddle & Reath LLP and practice in its Philadelphia office in the Corporate and Securities Group. Recently I have been serving as pro bono counsel to a nonprofit organization called B Lab in connection with its support of the enactment of legislation similar to S.B. 298 in various states around the country. Working with Trever Asam and his colleagues in the Honolulu bar, I prepared the first draft of what has become S.B. 298. The legislation that is being considered in Hawaii is similar to legislation that has been enacted in Maryland, New Jersey, Vermont, and Virginia¹. Similar legislation has been introduced, or will be introduced in the next few weeks, in California, Colorado, Michigan, New York, North Carolina, and Pennsylvania. In the course of my work in those various states, I have had the opportunity to participate in meetings of eight different bar association corporation law drafting committees – in California, Colorado, Maryland, New York, Pennsylvania, Vermont, Virginia, and Washington. S.B. 298 reflects those discussions

¹ As of March 13, 2011 (the date this testimony was prepared), the Virginia legislation had passed both houses of the Virginia legislature unanimously and was awaiting signature by the Governor.

with lawyers from around the country, as well as the testimony at the various legislative hearings that have been held and the legislative decisions made in the states that have enacted this type legislation. As the beneficiary of all of that prior work, S.B. 298 reflects the “state of the art” and the best thinking of many lawyers and legislators. Thus, I am confident in saying that enactment of S.B. 298 will be very good for Hawaii and its citizens.

The Legal Reason Why S.B. 298 is Needed

The purpose of S.B. 298 is to provide a legal framework for corporations that wish to operate on a for-profit basis, but that also wish – at the same time – to operate in a way that produces benefits for society and the environment beyond the production of goods and services and the provision of gainful employment. S.B. 298 is necessary because corporation law requires the directors of a corporation to be focused on making the maximum profit for the shareholders. Corporation law is different in this respect from the law governing limited liability companies. The members of an LLC have the freedom to vary the fiduciary duties of the persons managing an LLC. Thus it is not necessary to change the law to permit an LLC to be organized in the way that S.B. 298 provides for corporations.

Overview of S.B. 298

The goal of the legislation is to harness the power of the free market for the benefit of society and the environment. It sets up a system of disclosure and private monitoring that does not rely on the government to police the provisions of the bill. S.B. 298 may be summarized as follows:

- A sustainable business corporation has a purpose to benefit society and the environment, while also having the traditional purpose of making a profit for its shareholders.

- The duties of the directors and officers of a sustainable business corporation are modified to be consistent with those purposes.
- Once a year a sustainable business corporation must report on its performance during the previous year, and must make that report publicly available so that its employees, customers, other businesses in its industry, and the public generally can evaluate the corporation's performance.
- If a shareholder or director does not think the corporation is pursuing its benefit purpose, the shareholder or director may bring a lawsuit to correct the situation.

Description of the Provisions of S.B. 298

Being a sustainable business corporation is purely voluntary. An existing business corporation may elect to become a sustainable business corporation by a two-thirds vote of its shareholders. Terminating sustainable business corporation status or changing the type of public benefit to be created by the corporation similarly requires a two-thirds vote.

Every sustainable business corporation has as one of its corporate purposes the creation of a material positive impact on society and the environment taken as a whole. A sustainable business corporation may also identify specific public benefits that it is the purpose of the corporation to create.

It is important to emphasize that sustainable business corporations are for-profit businesses. In particular, passage of S.B. 298 will have no effect on the taxation of sustainable business corporations, and a business corporation that elects to become a sustainable business corporation will continue to be taxed as a business corporation.

The directors of a sustainable business corporation are required to consider the effects

of their actions on the accomplishment of general and specific public benefit. As they consider those effects, they are authorized to consider the following interests and factors:

- the ability of the sustainable business corporation to accomplish its public benefit purpose;
- the shareholders of the sustainable business corporation;
- the employees and workforce of the sustainable business corporation and its subsidiaries and suppliers;
- the interests of customers as beneficiaries of the general or specific public benefit purposes of the sustainable business corporation;
- community and societal considerations, including those of any community in which offices or facilities of the sustainable business corporation or its subsidiaries or suppliers are located;
- the local and global environment; and
- the short-term and long-term interests of the sustainable business corporation, including benefits that may accrue to the sustainable business corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the sustainable business corporation.

An officer of a sustainable business corporation must also consider the effects of his or her decisions on the accomplishment of general and specific public benefit when the officer has discretion to act with respect to a matter and it reasonably appears to the officer that the matter may have a material effect on the creation of public benefit or on one of the factors or interests I just listed.

The fiduciary duties of directors and officers of a sustainable business corporation are

a significant change from existing Hawaii law. Section 414-221 of the Hawaii business corporation law permits directors of Hawaii business corporations to consider the interests of corporate constituencies other than the shareholders, but the directors are not required to do so.

Every sustainable business corporation must have a “benefit director” who is responsible for evaluating the success of the corporation in creating public benefit. A sustainable business corporation may also have a “benefit officer” with such responsibilities as may be assigned to that position.

Each year the sustainable business corporation must prepare and distribute to its shareholders a report describing its efforts to create public benefit during the preceding year. The report must also be posted on any public website maintained by the corporation. In a regular business corporation, the corporation’s financial statements will show how the corporation is performing. The annual report on the creation of public benefit is intended to supplement the financial statements and to fill in the rest of the picture on how the corporation has performed.

As I have worked on this type of legislation around the country, I have repeatedly been impressed with the number of businesses who are supportive of the concept and eager to adopt this new form if it is available to them. I am confident that there will be a very positive response to the enactment of S.B. 298.

From: Brian Bell [reachbrianbell@yahoo.com]
Sent: Monday, March 14, 2011 10:35 AM
To: ERBtestimony
Subject: Testimony in support of SB298 SD3

TO: COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS
Rep. Angus L.K. McKelvey, Chair
Rep. Isaac W. Choy, Vice Chair

RE: HEARING on SB298 SD3
DATE: Tuesday, March 15, 2011
TIME: 8:00 a.m. Conference Room 312

Representatives McKelvey, Choy, and Members of the Committee,

I am writing in support of SB298 SD3, the bill that establishes a framework for the establishment of the Sustainable Business Corporation in Hawaii. There are many reasons why this type of corporate structure is good for Hawaii and good for business. Businesses that benefit the community by operating in a socially and environmentally responsible manner increase customer loyalty, which makes good business sense as they prove their worthiness to the public beyond merely the products and services they provide. Such practices have been shown in research to contribute positively to profitability. Under this legislation, these entities will formally agree to operate for the public benefit as follows:

- (1) Providing low-income or underserved individuals or communities with beneficial products or services;
- (2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
- (3) Preserving the environment;
- (4) Improving human health;
- (5) Promoting the arts, sciences, or advancement of knowledge;
- (6) Increasing the flow of capital to entities with a public benefit purpose; and
- (7) The accomplishment of any other particular benefit for society or the environment.

Sustainable business corporations exist to serve the interests of multiple stakeholders: shareholders, employees, customers, communities, and the environment. In demonstrating care for these stakeholders, I believe that public benefit corporations will be more successful businesses, which will encourage the entire business community to consider similar practices.

As this is a voluntary standard, obviously it is meant for those conscientious businesses that wish to embrace this high level of transparency and accountability. I urge the Committee to enable such businesses to strive for this level of integrity, and as such I urge you to support SB298 SD3 to raise the bar for business standards here in Hawaii.

Mahalo,

Brian Bell

4626 Sierra Dr

Honolulu, HI 96816

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 13, 2011 11:29 AM
To: ERBtestimony
Cc: swartzg001@hawaii.rr.com
Subject: Testimony for SB298 on 3/15/2011 8:00:00 AM

Testimony for ERB 3/15/2011 8:00:00 AM SB298

Conference room: 312

Testifier position: comments only

Testifier will be present: No

Submitted by: gregory swartz

Organization: Individual

Address:

Phone:

E-mail: swartzg001@hawaii.rr.com

Submitted on: 3/13/2011

Comments:

Please include a definition of "sustainable." This word is widely overused, misused and abused.