

SB 298, SD1

Measure Title: RELATING TO BUSINESS REGULATION.

Report Title: Business Regulation; Sustainable Business Corporations

Description: Establishes an organizational and regulatory framework for sustainable benefits corporations. (SD1)

Companion:

Package: None

Current Referral: CPN, JDL

TO THE SENATE COMMERCE & CONSUMER PROTECTION COMMITTEE
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

Date: Thursday, February 17, 2011
Time: 9:00 am
Conference Room: 229

**TESTIMONY ON SENATE BILL NO. 298, SD 1
RELATING TO BUSINESS REGULATION**

TO THE HONORABLE ROSALYN H. BAKER & THE HONORABLE BRIAN T. TANIGUCHI,
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 opposes this bill and requests that it be held.

Before explaining our reasons for opposition, we would like the Committee to know that we appreciate the recent opportunity to work with the proponents of this bill. After speaking with them, we understand that their goals are lofty and worthy and that they wish to change the singularly profit-driven nature of business. However, in the practical daily work of implementing a record keeping business registry, we were not able to reach consensus. Hawaii has one of the most advanced registries in the nation, having won top honors from the leading international registry organization four times in the last six years. From this perspective, the Division continues to view this bill as misplaced in Hawaii's business registry.

This bill is being used as a vehicle for Senate Bill 1462, Relating to Public Benefit Corporations. The entity name was changed to "Sustainable Business Corporations" ("SBCs") in order to avoid confusion with the entity of the same name under Haw. Rev. Stat. ("HRS") Chapter 414D. While the name has been changed, the bill's description of the SBCs purposes continue to suggest nonprofit corporations when in fact, these are purely private entities that are not regulated like charitable organizations. For example, section -6 of this bill requires a purpose of "creating a **general public benefit.**" (Emphasis added.) Words like "public benefit" continue to mimic the terms from the "public benefit corporations" under HRS 414D. In addition, the definition of "specific public benefit" enumerates seven (7) activities that resemble nonprofit purposes.¹

This intentional blurring of nonprofits with for-profits has been called a "national craze" that is "dangerous" and "misleading" by the New York Council of Charitable Organizations, an 83 year old membership organization representing 2,800 charities. We agree. It impacts the registry in the same way nonprofit registration did prior to being subject to the Attorney General's enforcement in Hawaii. The business registry's good standing of the corporation easily confuses the public as to what the State is certifying.

¹ (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.

Moreover, it is arguable that everything contemplated in the bill can be done under current corporate law. There is no case law that suggests a benefit corporation would have any true advantage in a court of law. Until the courts react otherwise, this bill is at best premature. Any promises of business advantage are unproven. This bill suggests we try to prove the advantage on the backs of Hawaii's small businesses and other public fee payers.

At its worst, this bill is a waste of public money. The cost to implement this bill has been estimated at \$130,000 and since our fees currently would not be able to cover this amount, we would have to ask for an appropriation or to raise fees on the public.

For these reasons, we respectfully ask that this bill be held. If, however, this Committee passes the bill, we then respectfully ask that the effective date of this bill (upon approval) be changed to July 1, 2012 to allow the registry time to properly implement this measure.

Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

S.B. NO. 298, S.D. 1, RELATING TO BUSINESS REGULATION.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Thursday, February 17, 2011 TIME: 9:00 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): David M. Louie, Attorney General, or
Hugh Jones, Deputy Attorney General

Chair Baker and Members of the Committee:

The purpose of this bill is to provide for a new form of for profit business organization called a Sustainable Business Corporation.

Under the common law and under various Hawaii statutes and federal laws, the Attorney General has oversight authority over public charities, private foundations, and charitable trusts¹. Among other things, the Attorney General has regulatory oversight over "public benefit corporations" recognized under chapter 414D, Hawaii Revised Statutes. A public benefit corporation under current law is a corporation that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code because they are operated for charitable, religious or educational purposes, or whom, upon dissolution, must distribute their assets to another public benefit corporation². The reason

¹These statutes include chapters 323D, 414D, 467B, and 517E, Hawaii Revised Statutes, and section 431:1-204, Hawaii Revised Statutes, and the Federal Telemarketing Sales Rule.

²See section 414D-14, Hawaii Revised Statutes:

"Public benefit corporation" means any corporation designated by statute as a public benefit corporation, or any corporation that

that the Attorney General has oversight over public benefit corporations and charities is that they generally do not have "shareholders" or other persons that can provide oversight and ensure that the charitable assets are used to provide public benefits.

In prior testimony on Senate Bill No. 1462, the Attorney General expressed the concern that using the term "public benefit corporation" to describe what is now called in Senate Draft 1 a "sustainable business corporation" might lead to widespread public confusion. Senate Draft 1 resolves the Attorney General's previously express concern in this regard.

However, we offer the following comments about Senate Draft 1. Sections - 8 and - 10 establish the concept of an independent "benefit director" and "benefit officer" who are supposed to be "independent" and ensure that the sustainable business corporation is providing general public benefits. The term "independent" is defined in section - 2 to disqualify persons from serving in these capacities if they have a "material relationship" with an officer or director of a sustainable business corporation. The definition also provides that a material relationship is "deemed to exist" if the following applies:

- (2) An immediate family member of the person is, or has been within the last three years, an executive officer of the sustainable business corporation or any of its subsidiaries, other than as a benefit officer;

is recognized as exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or that is organized for public or charitable purposes and upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

The term "immediate family member" is ambiguous. It is unclear if it would include persons living in the same household, or parties to a "civil union" or co-habitants for example. We recommend that this language be amended to exclude "any person related by blood, marriage, adoption, or who is a party to a civil union, to an officer or director of the sustainable business corporation, and any person who is a member of the household or who resides with an officer or director." We see no reason to allow a person with a material conflict to cease to have that conflict after three years.

If the person responsible for ensuring that a sustainable business corporation is in fact providing general public benefits, is the benefit officer, then it is essential that this person have independence both in spirit and in fact.

Thank you for considering our comments and suggestions.



**Testimony to the Senate Committees on Commerce and Consumer Protection
Thursday, February 17, 2011 at 9:00 a.m.
Conference Room 229, State Capitol**

RE: SENATE BILL NO. 298 SD1 RELATING TO BUSINESS REGULATION

Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

The Chamber of Commerce of Hawaii (“Chamber”) is in support of the intent of SB 298 SD1 relating to Business Regulation and respectfully request that the committee pass this measure for further discussion.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the “Voice of Business” in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state’s economic climate and to foster positive action on issues of common concern.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the “Voice of Business” in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state’s economic climate and to foster positive action on issues of common concern.

This measure establishes an organizational and regulatory framework for public benefit corporations.

Transparent companies, with clear social benefits, will attract investors and consumers and encourages beneficial corporate behavior without additional regulation. It will be attractive to investors who are seeking businesses that create public benefits and Hawaii will be known as a place that encourages the creation of these businesses.

Thank you for the opportunity to provide testimony.



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

DATE: February 15, 2011

HEARING DATE/TIME: Tuesday, Feb 17 at 9:00 in Room 229

TO: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

FROM: Bill Spencer
President
Hawaii Venture Capital Association

RE: Testimony In STRONG SUPPORT for SB298 SD1 *Relating to Business Regulations*

Thank you for the opportunity to provide testimony in STRONG SUPPORT of SB 298 SD1. 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



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February 15, 2011

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

HEARING

Thursday, February 17, 2011
9:00 a.m.
Conference Room 229

Re: Testimony in Support of SB298, SD1 Relating to Business Regulations

Dear Chair Baker, Vice Chair Taniguchi, 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, SD1. 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, SD1 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, SD1.

Sincerely yours,

/s/

Leigh-Ann K. Miyasato
President & Executive Director



We Support
SB298, SD1 Relating to Business Regulations

February 17, 2011

On behalf of the American Sustainable Business Council, I am writing to express our support for **SB298, SD1 Relating to Business Regulations**

The idea behind the Sustainable Business Corporation fits in very well with Hawaii's long-standing 'Aloha' principle for doing business. That principle holds that business should be conducted in a manner that respects the natural environment and supports local communities, while also generating profit. It's a win-win-win

SB298,SD1 Relating to Business Regulations builds on this principle. A Sustainable Business Corporations is a new corporate entity that offers entrepreneurs and investors the option to build and invest in businesses that meet higher standards of corporate purpose, accountability and transparency.

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.

The American Sustainable Business Council, based in Washington D.C., represents over 65,000 companies throughout US. We believe that business has a role to play building a financially vibrant economy, while also protecting our environment and quality of life in our communities. We have played a key role in having similar bills passed in Vermont and Maryland during their 2010 legislative sessions.

We believe that Sustainable Business Corporations will make Hawaii an even more attractive place to do business and bring additional investment into the state's economy. A "new economy" is blossoming across the country made up of businesses that are finding ways to do well while helping our environment and society at large. States that welcome these new businesses will be poised for growth. Hawaii should maintain its leadership position by enacting SB298, SD1.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Richard Eidlin".

Richard Eidlin
Issues Director
American Sustainable Business Council
303-478-0131
www.asbcouncil.org

TESTIMONY

Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair and Senator Brian T. Taniguchi, Vice Chair

Thursday, February 17, 2011
9:00 a.m. Conference Room 229

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 companies who are believers in doing business in ways that promote profitability, community development and support, and environmental stewardship.

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 and Vermont have enacted "B Corp" style legislation and New Jersey has passed it in both houses. 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.

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

1000 Bishop Street, Suite 1500, Honolulu, Hawaii 96813 P.O. Box 939, Honolulu, Hawaii 96808
Telephone: (808) 521-9200 Facsimile: (808) 521-9210

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

HEARING

Thursday, February 17, 2011
9:00 a.m.
Conference Room 229

Re: SB 298 Relating to Business Regulation.
STRONG SUPPORT

Dear Chair Baker, Vice Chair Taniguchi, 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.

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.

The DCCA asserts this legislation will create a significant burden on their office, that this statute is unnecessary, and will cause confusion. We respectfully disagree with each of these points. The DCCA records registrations of a number of entities. Instead of filing as a corporation or an LLC, a company would merely file as a sustainable business corporation. Thus, DCCA's aggregate ongoing filings will not increase. There will be some internal start up costs to denote a "sustainable business corporation" on certain forms. However, every change in the law requires some administrative paperwork revisions, so this cannot be a material factor against adopting improved laws. There is no requirement for DCCA to create a new registration form for a sustainable business corporation, as attorneys can prepare client documents as they do now. However, if DCCA chooses to prepare a form document, it is quite a simple matter.

I emphasize that the DCCA will not determine qualifications for a “sustainable business corporation.” Certification of a “sustainable business corporation” status, if at all, will be by outside authorities with the capacity to certify, like B Labs. (This is similar to current nonprofit entities where further qualification of tax exemption is left to the IRS.) Thus, the DCCA will only accept and record the forms as with other entities.

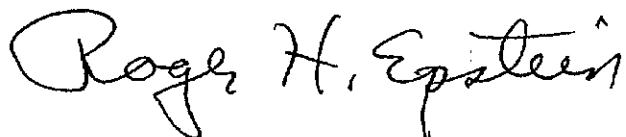
Nor do we see how adding a single additional entity will cause the confusion DCCA suggests would come about if there were the 100 different types of organizations they posture in their testimony.

Finally, I note that 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.

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, flowing style with a prominent initial "R".

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 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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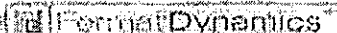
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The Washington Post

'Benefit corporations' sign up

choose to buy from local vendors at a higher cost to reduce its carbon footprint, much as the Big Bad Wolf 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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Trever K. Asam
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COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

HEARING

Thursday, February 17, 2011
9:00 a.m.
Conference Room 229

Re: SB 298/SD 1 Relating to Business Regulation
SUPPORT

Chair Baker, Vice Chair Taniguchi, 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 the 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.

Under SB 298, this changes.

Sustainable Business Corporations would be required to include in their Articles of Incorporation a commitment to create social benefits. The legislation further requires that a Sustainable Business Corporation publish an annual report measuring its accomplishments against an independent third-party standard, permitting investors and consumers to determine for themselves whether the entity is living up to its promises. The legislation adopts a market-based approach: investors and consumers – not the State – will determine whether a Sustainable Business Corporation is worthy of support.

SB 298 creates a new paradigm for investors, shareholders, corporations, and their directors. It is a paradigm whose time has come.

Sincerely,

Trever K. Asam

Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

Hearing

Thursday, February 17, 2011
9:00 a.m.

Re: SB298, SD1
Relating to Business Regulations

Dear Committee Members,

Thank you.

Your willingness to consider SB298, SD1 Relating to Business Regulations is very much appreciated. SB298, SD1 needs your strong support. Benefit Corporations, also known as "B Corps," are good for business and good for Hawaii. SB298, SD1 would serve the interests of businesses, shareholders, and consumers by permitting corporations to affirm a commitment to creating public benefits.

Businesses that generate calculable benefits for society can be known, not only for their products and profits but, for their quantifiable good works.

Hawaii should be encouraging and supporting Benefit Corporations. The enthusiasm and passion that the "B Corp" structure will bring to Hawaii will help to promote the Spirit of Aloha as the way Hawaii does business.

Please strongly support SB298, SD1.

Sincerely,

Denny McDonough
President of A & R M Systems
Adjunct: Chaminade University, Honolulu, Hawaii
e-mail: denyatarms@aol.com

TESTIMONY

Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair and Senator Brian T. Taniguchi, Vice Chair

Thursday, February 17, 2011
9:00 a.m.

SB298, SD1 Relating to Business Regulations

Dear Committee Members,

Thank you for hearing SB 298, SD1 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 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 and Vermont have enacted “B Corp” style legislation and New Jersey has passed it in both houses. It has 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

RE: SB298

Hearing Date: Thursday, February 17 9:00 am

Commerce and Consumer Protection Committee

Senator Rosalyn H. Baker, Chair

Senator Brian T. Taniguchi, Vice Chair

Senator Baker, Senator Taniguchi, and Members of the Committee,

I am writing in support of SB298, the bill that establishes a framework for 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 entities will formally agree to operate 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 this measure to raise the bar for business standards here in Hawaii.

Mahalo,



Michael Kramer

Managing Partner, Natural Investments LLC

Keauhou, HI

808-331-0910

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator Brian T. Taniguchi, Vice Chair

HEARING

Friday, February 17, 2011

9:00 a.m.

Conference Room 229

Re: SB298, SD1 Relating to Business Regulations- SUPPORT

Dear Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

Thank you for your consideration of this bill. As the Co-founder and CEO of GreenCar Hawaii I strongly support passage of SB 298.

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. The voluntary regime established by the bill would serve the interests of corporations, shareholders, and consumers and would make Hawaii a better place to do business.

SB 298 is important to businesses. Consumers and investors are seeking socially responsible companies – companies that can make a profit while accomplishing social good. The bill permits corporations to declare a commitment to creating public benefits, while simultaneously providing a mechanism through which to verify these benefits. Corporations that accomplish measurable benefits for society can be recognized for their good works and identified by interested consumers and investors.

Successful Sustainable Business Corporations will be transparent, committed to public benefits, and profitable. They are the types of businesses whose development should be encouraged in Hawaii. I strongly urge your support for this legislation.

Sincerely,

Justin MacNaughton

CEO / GreenCar Hawaii

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**TESTIMONY OF
WILLIAM H. CLARK, JR.
ON
SENATE BILL 298
BEFORE
HAWAII STATE LEGISLATURE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

February 17, 2011

Senator Baker 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. Throughout my career I have been involved in drafting corporation and other entity laws. My experience in that area is summarized in the Appendix.

Recently I have been serving as pro bono counsel to 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 the legislation that has been introduced as S.B. 298. The legislation that has been introduced in Hawaii is similar to legislation that has been enacted in Maryland, New Jersey¹, and Vermont. Similar legislation has been introduced, or will be introduced in the next few weeks, in California, Colorado, Michigan, North Carolina, and Pennsylvania. In the course of my work in those various states, I have had the opportunity to participate in meetings of seven different bar association corporation law drafting committees – in California, Colorado,

¹ As of February 9, 2011 (the date this testimony was prepared), the New Jersey legislation had passed both houses of the New Jersey legislature unanimously and was awaiting signature by the Governor.

Maryland, Pennsylvania, Vermont, Virginia, and Washington. S.B. 298 reflects those discussions 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 following interests and factors when making decisions:

- 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 those interests and factors when an 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.

Since the purpose of a regular business corporation is to maximize the profitability of the corporation for the benefit of its shareholders, it makes sense that the directors would not have a mandatory duty to anyone other than the shareholders. In a sustainable business corporation, on the other hand, which has the added purpose of creating public benefit, it makes sense that the duties of directors would expand to include interests and factors relevant to the creation of public benefit. In the case of officers, section 414-233 of the Hawaii business corporation law does not include a constituencies provision such as that applicable to directors; and thus officers are not even given the option of considering the interests of constituencies.

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 be filed with the Department of Commerce and Consumer Affairs, thus making it a matter of public record. 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.

Appendix

Experience of William H. Clark, Jr. with Entity Law Drafting Projects

I have served in the following capacities:

- Reporter for the Third Edition of the Model Nonprofit Corporation Act, which was adopted in 2008.
- ABA Reporter for the Model Entity Transactions Act, which was a joint project of the American Bar Association (ABA) and the National Conference of Commissioners on Uniform State Laws (NCCUSL) and authorizes mergers and other transactions involving more than one form of entity.
- Reporter for the Model Registered Agents Act prepared by NCCUSL, which provides uniform rules for agents for service of process for all types of entities.
- Reporter for the Uniform Law Enforcement Access to Entity Information Act prepared by NCCUSL, which is designed to satisfy the requirements of an international body, called the Financial Action Task Force, which was formed by the G-7 countries in 1989 to fight money-laundering and terrorist financing.
- Vice Chair of the NCCUSL drafting committee that is harmonizing all of the uniform unincorporated entity laws so that their language is consistent and they can be integrated into a single code.
- Co-chair of the NCCUSL drafting committee that prepared the Business Organizations Act, which provides a framework states can use to integrate their corporation and other entity laws into a single code.
- ABA Business Law Section Advisor to the NCCUSL drafting committee that prepared the Revised Uniform Limited Liability Company Act.
- ABA Business Law Section Advisor to the NCCUSL drafting committee that prepared the Uniform Statutory Trust Entity Act.
- Member of the Committee on Corporate Laws of the ABA Section on Business Law, which prepares the Model Business Corporation Act, and Chair of several task forces of the Committee which prepared various provisions of the Model Business Corporation Act.
- Co-chair and Reporter for the Title 15 / Business Associations Committee of the Business Law Section of the Pennsylvania Bar Association. For more than 20 years I have been responsible for drafting the Pennsylvania corporation and other entity laws.
- Legislative Counsel to the North Dakota Corporate Governance Council which prepared the first shareholder friendly corporation law in the United States.

TESTIMONY

Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair and Senator Brian T. Taniguchi, Vice Chair

Thursday, February 17, 2011
9:00 a.m. Conference Room 229

SB 298, SD1 Relating to Business Regulation

Dear Committee Members,

Thank you for hearing SB 298, SD1 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 and Vermont have enacted “B Corp” style legislation and New Jersey has passed it in both houses. 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

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Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair and Senator Brian T. Taniguchi, Vice Chair

Thursday, February 17, 2011
9:00 a.m. Conference Room 229

SB298, SD1 Relating to Business Regulations

Dear Committee Members,

Thank you for hearing **SB298, SD1** 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 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 and Vermont have enacted “B Corp” style legislation and New Jersey has passed it in both houses. It has 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.

Respectfully yours,

Patrick Bustamante
Business Consultant