

SB1462

Measure Title: RELATING TO PUBLIC BENEFIT CORPORATIONS.

Report Title: Public Benefit Corporations; Organization

Description: Establishes an organizational and regulatory framework for public benefit corporations.

Companion:

Package: None

Current Referral: CPN, WAM

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

Date: Friday, February 11, 2011
Time: 8:30 am
Conference Room: 229

**TESTIMONY ON SENATE BILL NO. 1462
RELATING TO PUBLIC BENEFIT CORPORATIONS**

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 of the Business Registration Division (BREG), Department of Commerce and Consumer Affairs ("Department"). The Department opposes this bill and requests that it be held.

This bill creates a new chapter in the Hawaii Revised Statutes that would establish a new type of private entity called a public benefit corporation. We appreciate the bill's intent to promote socially responsible for-profit businesses. Unfortunately, the creation of such an entity ultimately does more harm than good.

We believe the new entity will cause confusion and mislead the public. First, there is already an entity called a "public benefit corporation" which can be formed under HRS chapter 414D, the Hawaii Nonprofit Corporations Act. Some of these 414D-entities are considered quasi-government instrumentalities (such as the Hawaii Health Systems Corp created by legislative action, HRS chapter 323F). Other 414-D PBCs are nonprofits that have secured 501(c)(3) tax exempt status from the Internal Revenue Service ("IRS"). The Attorney General has

oversight of these entities to protect the public trust and must be consulted for issues such as determining conflicts of interest, transfers of assets, approving mergers, and removing directors.

Under this current bill, businesses that choose to be one of these new "public benefit corporations" would easily be confused with the nonprofit entities of the same name. In fact, the purpose of this new law seems to be to let these private companies brand themselves as semi-non-profit or State entities when in reality, these companies are truly private with agendas that are not enforced and examined by the Attorney General or anyone with public authority. The public may invest in these entities thinking they are watched over and held accountable by the State but in fact, they are not. Nothing in the bill deters a business from encouraging that mistaken belief, nor sets standards for ensuring that it complies with the intent of this legislation.

In recent years, Hawaii has experienced problems with the public being misled by organizations calling themselves "nonprofits." To protect the public, this legislative body wisely responded by establishing the Attorney General's authority to oversee and enforce nonprofit law. Unfortunately, we can expect the same outcomes of public confusion for this new measure. We hope that this legislative body will again make protecting the public a priority by holding this bill. While this new bill creates these nonprofit-like entities that may be a valuable marketing tool, branding of this kind is not normally accomplished through

legislation and it should not be. There is too much riding on a perceived "seal of approval" from state government.

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 or before the IRS. Until the IRS or 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 and something that will confuse and possibly be the source of fraud on the public. The cost to implement this bill has been estimated at \$143,000 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. 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. 1462, RELATING TO PUBLIC BENEFIT CORPORATIONS.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Friday, February 11, 2011 TIME: 8:30 a.m.

LOCATION: State Capitol, Room 229

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

Chair Baker and Members of the Committee:

The Attorney General opposes this legislative proposal as currently drafted.

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 it is operated for charitable, religious, or educational purposes, or which, upon dissolution, must distribute its assets to another public benefit corporation².

¹These statutes include chapters 323D, 414D, 467B, 431:1-204(c)(1)(C), and 517E, 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 is recognized as exempt under section

Chapter 414D, Hawaii Revised Statutes, provides the Attorney General with oversight of mergers and dissolutions of public benefit corporations, as conflict of interest transactions involving directors and officers and the sale of assets by public benefit corporations. There are presently over 1,680 registered charitable organizations that are registered with the Attorney General under section 467B-2.1, Hawaii Revised Statutes. Many of these organizations are "public benefit corporations."

One major problem with this bill as drafted is that in an attempt to create a new form of taxable, for-profit entity, it uses nomenclature that is used throughout the Revised Model Nonprofit Corporation Act, adopted in Hawaii as chapter 414D, Hawaii Revised Statutes, to describe "charities" that operate in nonprofit corporation form. If adopted in its current form, this bill will create irreconcilable conflicts between the two chapters, but more importantly, widespread public confusion about whether this new form of business entity is charitable or not.

The Attorney General respectfully requests that this measure be held because there appears to be no way to constitutionally amend³ this bill to describe this new form of business entity as anything other than a "public benefit

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.

³See article III, section 14 of the Hawaii Constitution which provides in pertinent part "[n]o law shall be passed except by bill. Each law shall embrace but one subject, which shall be expressed in its title." (emphasis added).

corporation" because the title of this measure is "A Bill
Relating to Public Benefit Corporations."



**Testimony to the Senate Committees on Commerce and Consumer Protection
Friday, February 11, 2011 at 8:30 a.m.
Conference Room 229, State Capitol**

**RE: SENATE BILL NO. 1462 RELATING TO PUBLIC BENEFIT
CORPORATIONS**

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 1462 relating to Public Benefit Corporations 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 know 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 9, 2006

HEARING DATE/TIME: FEBRUARY 11, 2011 8:30AM, Conference 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 SB 1462 Relating to Public Benefit Corporations

Thank you for the opportunity to provide testimony in STRONG SUPPORT of SB 1462. 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



TO: Senator Rosalyn H. Baker
Chair, Committee on Commerce and Consumer Protection
Senator Brian T. Taniguchi
Vice Chair, Committee on Commerce and Consumer Protection
Via Email: EDTTestimony@Capitol.hawaii.gov

FROM: Tim Wong
Vice President, Head of Strategy
Sopogy, Inc.

DATE: February 9, 2011

RE: **S.B. 1462 Relating to Public Benefit Corporations**
Hearing: Friday, February 11, 2011 at 8:30 a.m., Room 229

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

My name is Tim Wong and I am the Head of Strategy for Sopogy, Inc. (Sopogy). Sopogy is a solar power technology company based in Hawaii that uses concentration solar thermal to heat to generate electricity, process heat, and provide solar air conditioning. Our mission is to bring renewable solar energy technologies to Hawaii and its people for the betterment of our environment, independence from volatile imported fossil fuels, and energy stability.

Sopogy **supports** S.B. 1462, as it provides the ground work to allow companies to do social good while they making profits. This measure will allow benefit corporations a 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. We believe this will allow companies to focus on doing what is right for the environment.

Thank you for this opportunity to present testimony in support of this measure.



COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator Brian T. Taniguchi, Vice Chair

HEARING

Friday, February 11, 2011

8:30 a.m.

Conference Room 229

Re: SB 1462 Relating to Public Benefit Corporations - 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 1462.

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 SB 1462 would serve the interests of corporations, shareholders, and consumers and would make Hawaii a better place to do business.

SB 1462 is important to businesses. Consumers and investors are seeking socially responsible companies – companies that can make a profit while accomplishing social good. SB 1462 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 Benefit 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

415-999-3536

www.greencarhawaii.com



**We Support the Hawaii Benefit Corporation Legislation
February 10, 2011**

On behalf of the American Sustainable Business Council, I am writing to express our support for SB 1462; the Hawaii Benefit Corporation Bill.

The idea behind the B 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


SB 1462 builds on this principle. B Corporations are 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 Benefit Corporations, fiduciary duty is redefined by stating that the creation of public benefit is in the best interests of the Benefit 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 Benefit Corporation bills passed in Vermont and Maryland during their 2010 legislative sessions.

We believe that Benefit 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 a Benefits Corporation law.

Respectfully yours,



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

February 10, 2011

Trever K. Asam
Direct Line: (808) 521-9274
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COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

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

HEARING

Friday, February 11, 2011
8:30 a.m.
Conference Room 229

Re: SB 1462 Relating to Public Benefit Corporations.
SUPPORT

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

My name is Trever Asam; I am an attorney at Cades Schutte, a law firm in Honolulu. Working with a group of individuals and businesses here in Hawaii, as well as representatives from B Labs, a non-profit organization in Pennsylvania, I helped to draft the Benefit Corporation legislation currently before the Committee.

Shortly after the legislation was introduced, I had a series of discussions with Ms. Tung Chan of the DCCA, who expressed certain concerns regarding the legislation. In light of those discussions and to address DCCA's concerns, I would like to propose the following amendments:

1. Replace all occurrences of the term "Public Benefit Corporation" with the term "Benefit Corporation." The definition for "Benefit Corporation" would correspondingly be moved to the beginning of section -2 to maintain the alphabetical order of defined terms.
2. Add the following language to the end of section -12 as subsection (g): The provisions of section 414-16 shall apply to this section.

C S

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COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator Brian T. Taniguchi, Vice Chair

Page 2

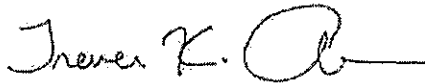
A mark-up of the legislation with these proposed changes made is attached.

The first change addresses a concern articulated by Ms. Chan that the use of term “public benefit corporation” is confusing because that term currently appears in Haw. Rev. Stat. § 414D. We accordingly propose using the term “Benefit Corporation.” The term “Benefit Corporation” does not appear as a defined term in any of Hawaii’s statutes or regulations, thus alleviating the confusion identified by Ms. Chan.

The second change addresses a concern raised by Ms. Chan regarding the administrative role of the DCCA in receiving and filing benefit corporations’ annual benefit statements. Ms. Chan was concerned that the legislation would impose an additional burden on her office to actively regulate the content of Benefit Corporations’ annual benefit reports. This is not the intention of the legislation. Rather, the legislation seeks only to ensure that such reports are filed with the DCCA so that they may be reviewed by the public. Accordingly, the proposed amendment would make explicit that the DCCA’s role in receiving and filing the annual benefit reports is purely ministerial by reference to Haw. Rev. Stat. § 414-16. That provision states that the DCCA’s duty to file documents is ministerial, and that the DCCA’s filing or refusal to file documents does not affect the validity or invalidity of the document or relate to the correctness or incorrectness of information contained in the document.

I am happy to answer any questions that the Committee may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Trever K. Asam", with a long horizontal flourish extending to the right.

Trever K. Asam

1 derivatively on behalf of a ~~public~~^g benefit corporation, against
2 a director or officer for:

3 (1) Failure to pursue the general public benefit purpose
4 of the ~~public~~^g benefit corporation or any specific
5 public benefit purpose set forth in its articles; or

6 (2) Violation of a duty or standard of conduct under this
7 chapter.

8 "Benefit officer" means the individual designated as the
9 benefit officer of a ~~public~~^g benefit corporation under
10 section -10.

11 "General public benefit" means a material positive impact
12 on society and the environment, taken as a whole and as measured
13 by a third-party standard, from the business and operations of a
14 ~~public~~^g benefit corporation.

15 "Independent" means that a person has no material
16 relationship with a ~~public~~^g benefit corporation or any of its
17 subsidiaries. Serving as a benefit director or benefit officer
18 shall not deem a person independent. A material relationship
19 between a person and a ~~public~~^g benefit corporation or any of its
20 subsidiaries shall be conclusively presumed to exist if any of
21 the following apply:



- 1 (1) The person is, or has been within the last three
2 years, an employee of the ~~public~~ benefit corporation
3 or any of its subsidiaries, other than as a benefit
4 officer;
- 5 (2) An immediate family member of the person is, or has
6 been within the last three years, an executive officer
7 of the ~~public~~ benefit corporation or any of its
8 subsidiaries, other than as a benefit officer; or
- 9 (3) There is a beneficial or record ownership of five per
10 cent or more of the outstanding shares of the ~~public~~
11 benefit corporation by:
- 12 (A) The person; or
- 13 (B) An association:
- 14 (i) Of which the person is a director, an
15 officer, or a manager; or
- 16 (ii) In which the person owns beneficially or of
17 record five per cent or more of the
18 outstanding equity interests.
- 19 A percentage of ownership in an association shall be calculated
20 as if all outstanding rights to acquire equity interests in the
21 association had been exercised.



1 "Minimum status vote" means that in addition to any other
2 approval or vote required by this chapter or a bylaw adopted by
3 the shareholders:

4 (1) The holders of shares of every class or series shall
5 be entitled to vote on the corporate action regardless
6 of any limitation stated in the articles of
7 incorporation or bylaws on the voting rights of any
8 class or series; and

9 (2) The corporate action must be approved by vote of the
10 shareholders of each class or series entitled to cast
11 at least two-thirds of the votes that all shareholders
12 of the class or series are entitled to cast thereon.

13 "Public benefit corporation" means a domestic corporation,
14 as defined in section 414-3, that has elected to become subject
15 to this chapter and whose status as a ~~public~~ benefit corporation
16 has not been terminated as provided in this chapter.

17 "Specific public benefit" includes:

- 18 (1) Providing low-income or underserved individuals or
19 communities with beneficial products or services;
20 (2) Promoting economic opportunity for individuals or
21 communities beyond the creation of jobs in the normal
22 course of business;



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

9 "Subsidiary" of a person means an association in which the
10 person owns beneficially or of record fifty per cent or more of
11 the outstanding equity interests. A percentage of ownership in
12 an association shall be calculated as if all outstanding rights
13 to acquire equity interests in the association had been
14 exercised.

15 "Third-party standard" means a standard for defining,
16 reporting, and assessing overall corporate social and
17 environmental performance that is:

- 18 (1) Comprehensive in that it assesses the effect of the
- 19 business and its operations upon the interest listed
- 20 in section -7(a);
- 21 (2) Developed by an organization that is independent of
- 22 the ~~public~~ benefit corporation;



- 1 (3) Credible because the standard is developed by an
2 organization that:
- 3 (A) Has access to necessary expertise to assess
4 overall corporate social and environmental
5 performance; and
- 6 (B) Uses a balanced multi-stakeholder approach
7 including a public comment period of at least
8 thirty days to develop the standard; and
- 9 (4) Transparent because the following information is
10 publicly available:
- 11 (A) The criteria considered when measuring the
12 overall social and environmental performance of a
13 business, as well as the relative weightings of
14 those criteria;
- 15 (B) The identity of the directors, officers, any
16 material owners, and the governing body of the
17 organization that developed and controls
18 revisions to the standard;
- 19 (C) The process by which revisions to the standard
20 are made;
- 21 (D) The process by which changes to the membership of
22 the governing body of the organization that



1 developed and controls revisions to the standard
2 are made; and
3 (E) An accounting of the sources of financial support
4 for the organization that developed and controls
5 revisions to the standard, with sufficient detail
6 to disclose any relationships that could
7 reasonably be considered to present a potential
8 conflict of interest.

9 § -3 Formation of ~~public~~ benefit corporations. A ~~public~~
10 benefit corporation shall be formed in accordance with the
11 domestic corporation organizational requirements of chapter 414,
12 except that its articles shall also state that it is a ~~public~~
13 benefit corporation.

14 § -4 Election of an existing domestic corporation to
15 become a ~~public~~ benefit corporation. (a) An existing domestic
16 corporation may become a ~~public~~ benefit corporation under this
17 chapter by amending its articles so that they contain, in
18 addition to the requirements of chapter 414, part XI, a
19 statement that the corporation is a ~~public~~ benefit corporation.
20 The amendment shall not be effective unless it is adopted by at
21 least the minimum status vote.

1 (b) If a corporation that is not a ~~public~~ benefit
2 corporation is a party to a merger, consolidation, or division,
3 or is the exchanging corporation in a share exchange and the
4 surviving, new, or any resulting corporation in the merger,
5 consolidation, division, or share exchange is to be a ~~public~~
6 benefit corporation, then the plan of merger, consolidation,
7 division, or share exchange shall not be effective unless it is
8 adopted by the corporation by at least the minimum status vote.

9 § -5 Termination of ~~public~~ benefit corporation status.

10 (a) A ~~public~~ benefit corporation may terminate its status as
11 such and cease to be subject to this chapter by amending its
12 articles to delete the statement that the corporation is a
13 ~~public~~ benefit corporation, as required by section -3. The
14 amendment shall not be effective unless it is adopted by at
15 least the minimum status vote.

16 (b) If a plan of merger, consolidation, division, or share
17 exchange would have the effect of terminating the status of a
18 business corporation as a ~~public~~ benefit corporation, the plan
19 shall not be effective unless it is adopted by at least the
20 minimum status vote.

21 § -6 Corporate purposes. (a) Every ~~public~~ benefit
22 corporation shall have the purpose of creating a general public



1 benefit. This purpose is in addition to its purpose as
2 specified pursuant to section 414-41.

3 (b) In addition to its purpose under section 414-41 and
4 subsection (a), the articles of a ~~public~~ benefit corporation may
5 identify one or more specific public benefits for which the
6 ~~public~~ benefit corporation was created. The identification of a
7 specific public benefit under this subsection does not limit the
8 obligation of a ~~public~~ benefit corporation to create a general
9 public benefit.

10 (c) The creation of general and specific public benefits
11 as provided in subsections (a) and (b) of this section shall be
12 in the best interests of the ~~public~~ benefit corporation.

13 (d) A ~~public~~ benefit corporation may amend its articles to
14 add, amend, or delete the identification of a specific public
15 benefit for which the ~~public~~ benefit corporation was created.
16 The amendment shall not be effective unless it is adopted by at
17 least the minimum status vote.

18 § -7 Standard of conduct for directors. (a) In
19 discharging the duties of their respective positions, the board
20 of directors, committees of the board, and individual directors
21 of a ~~public~~ benefit corporation, in considering the best
22 interests of the ~~public~~ benefit corporation:



- 1 (1) Shall consider the effects of any action upon:
- 2 (A) The shareholders of the ~~public~~^g benefit
- 3 corporation;
- 4 (B) The employees and workforce of the ~~public~~^g benefit
- 5 corporation and its subsidiaries and suppliers;
- 6 (C) The interests of customers as beneficiaries of
- 7 the general or specific public benefit purposes
- 8 of the ~~public~~^g benefit corporation;
- 9 (D) Community and societal considerations, including
- 10 those of any community in which offices or
- 11 facilities of the ~~public~~^g benefit corporation or
- 12 its subsidiaries or suppliers are located;
- 13 (E) The local and global environment;
- 14 (F) The short-term and long-term interests of the
- 15 ~~public~~^g benefit corporation, including benefits
- 16 that may accrue to the ~~public~~^g benefit corporation
- 17 from its long-term plans and the possibility that
- 18 these interests may be best served by the
- 19 continued independence of the ~~public~~^g benefit
- 20 corporation; and



1 (G) The ability of the ~~public~~^o benefit corporation to
2 accomplish its general public benefit purpose and
3 any specific public benefit purpose;

4 (2) May consider;

5 (A) The resources, intent, and conduct of any person
6 seeking to acquire control of the corporation;
7 and

8 (B) Any other pertinent factors or the interests of
9 any other group that they deem appropriate; and

10 (3) Shall not be required to give priority to the
11 interests of any particular person or group referred
12 to in paragraphs (1) or (2) over the interests of any
13 other person or group unless the ~~public~~^o benefit
14 corporation has stated its intention to give priority
15 to interests related to a specific public benefit
16 purpose identified in its articles.

17 (b) The consideration of interests and factors in the
18 manner required by subsection (a) shall not constitute a
19 violation of a director's fiduciary duties.

20 (c) A director shall not be personally liable for monetary
21 damages for any action taken as a director if the director
22 performed the duties of the director's office in compliance with



1 the general standards of conduct pursuant to section 414-221 and
2 this section or for failure of the ~~public~~ benefit corporation to
3 create a general public benefit or a specific public benefit.

4 (d) A director shall not have a fiduciary duty to a person
5 that is a beneficiary of the general or specific public benefit
6 purposes of a ~~public~~ benefit corporation arising from the status
7 of the person as a beneficiary.

8 § -8 **Benefit director.** (a) The board of directors of a
9 ~~public~~ benefit corporation shall include one director who shall
10 be designated the "benefit director" and shall have, in addition
11 to all of the powers, duties, rights, and immunities of the
12 other directors of the ~~public~~ benefit corporation, the powers,
13 duties, rights, and immunities provided in this section.

14 (b) The benefit director shall be elected and may be
15 removed in the manner provided by sections 414-198 and 414-199,
16 and shall be an individual who is independent. The benefit
17 director may serve concurrently as the benefit officer. The
18 articles or bylaws of a ~~public~~ benefit corporation may prescribe
19 additional qualifications of the benefit director, provided that
20 the qualifications are consistent with this subsection.

21 (c) The benefit director shall prepare, and the ~~public~~
22 benefit corporation shall include in the annual benefit report



1 to shareholders required by this chapter, a statement whether,
2 in the opinion of the benefit director, the ~~public~~ benefit
3 corporation acted in accordance with its general, and any
4 specific, public benefit purpose in all material respects during
5 the period covered by the report and whether the directors and
6 officers complied with sections -7(a) and -9(a),
7 respectively. If in the opinion of the benefit director the
8 ~~public~~ benefit corporation or its directors or officers failed
9 to act accordingly, then the statement of the benefit director
10 shall include a description of the ways in which the ~~public~~
11 benefit corporation or its directors or officers failed to act
12 accordingly.

13 (d) For all purposes, the acts of an individual in the
14 capacity of a benefit director shall constitute acts of that
15 individual in the capacity of a director of the ~~public~~ benefit
16 corporation.

17 (e) If the bylaws of a ~~public~~ benefit corporation provide
18 that the powers and duties conferred or imposed upon the board
19 of directors shall be exercised or performed by a person or
20 persons other than the directors or if the bylaws of a statutory
21 close corporation that is a ~~public~~ benefit corporation provide
22 that the business and affairs of the corporation shall be



1 managed by or under the direction of the shareholders, then the
2 bylaws of the ~~public~~ benefit corporation shall provide that the
3 person, persons, or shareholders who perform the duties of the
4 board of directors shall include a person with the powers,
5 duties, rights, and immunities of a benefit director.

6 (f) Regardless of whether the bylaws of a ~~public~~ benefit
7 corporation include a provision eliminating or limiting the
8 personal liability of directors, a benefit director shall not be
9 personally liable for any act or omission committed in the
10 capacity of a benefit director unless the act or omission
11 constitutes self-dealing, wilful misconduct, or a knowing
12 violation of law.

13 § -9 Standard of conduct for officers. (a) Each
14 officer of a ~~public~~ benefit corporation shall consider the
15 interests and factors described in section -7(a) in the
16 manner provided in that section when:

17 (1) The officer has discretion to act with respect to a
18 matter; and

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

21 (A) The creation of general or specific public
22 benefit by the ~~public~~ benefit corporation; or



1 (B) Any of the interests or factors referred to in
2 section -7(a).

3 (b) The consideration of interests and factors pursuant to
4 subsection (a) shall not constitute a violation of the officer's
5 fiduciary duties.

6 (c) An officer shall not be personally liable for monetary
7 damages for any action taken as an officer if the officer
8 performed the duties of the position in compliance with the
9 general standards of conduct pursuant to section 414-233 and
10 this section or for failure of the ~~public~~ benefit corporation to
11 create a general or specific public benefit.

12 (d) An officer shall not have a fiduciary duty to a person
13 that is a beneficiary of the general or specific public benefit
14 purposes of a ~~public~~ benefit corporation arising from the status
15 of the person as a beneficiary.

16 § -10 **Benefit officer.** A ~~public~~ benefit corporation may
17 have an officer designated the "benefit officer" who shall have
18 the authority and shall perform the duties in the management of
19 the ~~public~~ benefit corporation relating to the purpose of the
20 corporation to create general or specific public benefit as may
21 be provided by or pursuant to the bylaws or, in the absence of
22 controlling provisions in the bylaws, as may be determined by or



1 pursuant to resolutions or orders of the board of directors. If
2 a ~~public~~ benefit corporation has a benefit officer, the duties
3 of the benefit officer shall include preparing the benefit
4 report required by section -12.

5 § -11 Right of action. (a) Except as provided in
6 sections -12(e) and -12(f), the duties of directors and
7 officers under this chapter, and the general and any specific
8 public benefit purpose of a ~~public~~ benefit corporation, shall be
9 enforced only in a benefit enforcement proceeding. Except as
10 provided in section -12(e) and -12(f), no person may bring
11 an action or assert a claim against a ~~public~~ benefit corporation
12 or its directors or officers with respect to the duties of
13 directors and officers under this chapter and the general and
14 any specific public benefit purpose of the ~~public~~ benefit
15 corporation, except in a benefit enforcement proceeding.

16 (b) A benefit enforcement proceeding may be commenced or
17 maintained only:

- 18 (1) Directly by the ~~public~~ benefit corporation; or
- 19 (2) Derivatively by:
 - 20 (A) A shareholder;
 - 21 (B) A director;



- 1 (C) A person or group of persons that owns
- 2 beneficially or of record five per cent or more
- 3 of the equity interests in an association of
- 4 which the ~~public~~^g benefit corporation is a
- 5 subsidiary; or
- 6 (D) Any other persons as may be specified in the
- 7 articles or bylaws of the ~~public~~^g benefit
- 8 corporation.

9 § -12 Annual benefit report. (a) A ~~public~~^g benefit
10 corporation shall deliver to each shareholder an annual benefit
11 report including:

- 12 (1) A narrative description of:
 - 13 (A) The ways in which the ~~public~~^g benefit corporation
 - 14 pursued general public benefits during the year
 - 15 and the extent to which general public benefit
 - 16 was created;
 - 17 (B) The ways in which the ~~public~~^g benefit corporation
 - 18 pursued any specific public benefit that the
 - 19 articles state as a purpose of the ~~public~~^g benefit
 - 20 corporation and the extent to which that specific
 - 21 public benefit was created; and



- 1 (C) Any circumstances that have hindered the creation
2 by the ~~public~~^g benefit corporation of general or
3 specific public benefits;
- 4 (2) An assessment of the overall social and environmental
5 performance of the ~~public~~^g benefit corporation,
6 prepared in accordance with a third-party standard
7 applied consistently with any application of that
8 standard in prior benefit reports or accompanied by an
9 explanation of the reasons for any inconsistent
10 application;
- 11 (3) The name of the benefit director and the benefit
12 officer, if any, and the address to which
13 correspondence to each of them may be directed;
- 14 (4) The compensation paid by the ~~public~~^g benefit
15 corporation during the year to each director in that
16 capacity;
- 17 (5) The name of each person that owns five per cent or
18 more of the outstanding shares of the ~~public~~^g benefit
19 corporation either beneficially, to the extent known
20 to the ~~public~~^g benefit corporation without independent
21 investigation, or of record;



- 1 (6) The statement of the benefit director described in
2 section -8(c); and
- 3 (7) A statement of any connection to the third party
4 standard, or its directors, officers, or material
5 owners from the ~~public~~^g benefit corporation, or its
6 directors, officers, and material owners, including
7 any financial or governance relationship that might
8 materially affect the credibility of the objective
9 assessment of the third party standard.
- 10 (b) The benefit report shall be sent annually to each
11 shareholder within one hundred twenty days following the end of
12 the fiscal year of the ~~public~~^g benefit corporation.
- 13 (c) A ~~public~~^g benefit corporation shall post its most
14 recent benefit report on the public portion of its website, if
15 any, except that the compensation paid to directors and any
16 financial or proprietary information included in the benefit
17 report may be omitted from the benefit report as posted.
- 18 (d) Concurrently with the delivery of the benefit report
19 to shareholders pursuant to subsection (b), the ~~public~~^g benefit
20 corporation shall deliver a copy of the benefit report to the
21 department of commerce and consumer affairs for filing, except
22 that the compensation paid to directors and any financial or



1 proprietary information included in the benefit report may be
2 omitted from the benefit report as filed under this section.
3 The department of commerce and consumer affairs shall charge a
4 fee of \$70 for filing a benefit report.

5 (e) In addition to the penalties set forth in section
6 414-473, each ~~public~~ benefit corporation that fails or refuses
7 to file its benefit report for any year shall be subject to a
8 forfeiture of an amount to be determined by the director of
9 commerce and consumer affairs not to exceed \$100 for every
10 violation, neglect, or failure, to be recovered by action
11 brought in the name of the State by the director. A continuance
12 of a failure to file the required report shall be a separate
13 offense for each thirty days of the continuance. The director
14 of commerce and consumer affairs, for good cause shown, may
15 reduce or waive the penalty imposed by this section.

16 (f) In addition to the grounds for administrative
17 dissolution set forth in section 414-401, the director of
18 commerce and consumer affairs may commence a proceeding under
19 section 414-402 to administratively dissolve a ~~public~~ benefit
20 corporation if the ~~public~~ benefit corporation fails to file its
21 annual benefit report for a period of two years."

22 (g) The provisions of section 414-16 shall apply to this section.



1 SECTION 2. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Yvonne

Yvonne Ann Oakland

Melanie Pina

Clemente Michikawa

Amel Yje

R. D. D. J.

J. J.

Robert J. J.
Mike J. J.

Will G. J.

J. J.
J. J.

J. J.
Carol J. J.



Report Title:

Public Benefit Corporations; Organization

Description:

Establishes an organizational and regulatory framework for public benefit corporations.

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



Testimony for CPN 2/11/2011 8:30:00 AM SB1462

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: dwight kealoha

Organization: Better Business Bureau

Address: 1132 Bishop St

Phone: 628-3913

E-mail: dkealoha@hawaii.bbb.org

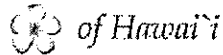
Submitted on: 2/9/2011

Comments:

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.



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February 10, 2011

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

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

HEARING

Friday, February 11, 2011
8:30 a.m.
Conference Room 229

Re: Testimony in Support of SB 1462 Relating to Public Benefit Corporations

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 SB 1462. 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, SB 1462 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 SB 1462.

Sincerely yours,

/s/

Leigh-Ann K. Miyasato
President & Executive Director

TESTIMONY

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

Friday, February 11, 2011
8:30 a.m. Conference Room 229

SB1462 Relating to Public Benefit Corporations

Dear Committee Members,

Thank you for hearing SB 1462 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

TESTIMONY

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

Friday, February 11, 2011
8:30 a.m. Conference Room 229

SB1462 Relating to Public Benefit Corporations

Dear Committee Members,

Thank you for hearing SB 1462 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

TESTIMONY

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

Friday, February 11, 2011
8:30 a.m. Conference Room 229

SB1462 Relating to Public Benefit Corporations

Dear Committee Members,

Thank you for hearing SB 1462 today. I support SB1462 as an innovative way to encourage companies to adopt practices that support a 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. Having a “B Corp”, or Benefits Corporation, allows companies another option 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. Hawai‘i, with a root culture that ensures shared responsibility for taking care of our people and places, is well-positioned to be part of these pioneering efforts.

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,



Cheryl L. Ka`uhane Lupenui
President and Chief Executive Officer
YWCA of O`ahu

TESTIMONY

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

Friday, February 11, 2011
8:30 a.m. Conference Room 229

SB1462 Relating to Public Benefit Corporations

Dear Committee Members,

Thank you for hearing SB 1462 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,

Patrick Bustamante
Business Consultant

TESTIMONY

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

Friday, February 11, 2011
8:30 a.m. Conference Room 229

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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

TESTIMONY

Committee: CPN
Hearing Date: 2/11/2011 8:30AM
SB1462

Testimony in Strong Support of SB1462

Testifier: Gary Hooser, speaking as an individual

Honorable Committee Chair Baker, Vice Chair Taniguchi and members of the Senate Commerce and Consumer protection committee:

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 SB 1462 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 – SB1462 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 please consider passing out SB1462.

Gary Hooser
808-652-4279
garylhooser@hotmail.com
5685 Ohelo Road, Kapaa Hawaii 96746

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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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 COMMERCE AND CONSUMER PROTECTION

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

HEARING

Friday, February 11, 2011
8:30 a.m.
Conference Room 229

Re: SB 1462 Relating to Public Benefit Corporations.
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 1462. 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 Benefit Corporations 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 Benefit Corporation. Thus, DCCA's aggregate ongoing filings will not increase. There will be some internal start up costs to denote "Benefit 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 Benefit Corporations, 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 "Benefit Corporation." Certification of "Benefit" 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.

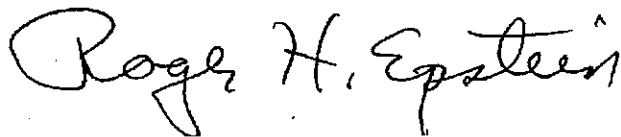
Nor do we see how adding a single additional entity will cause the confusion DCCA suggests would come about if there were the 100 different types of organizations they posture in their testimony.

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, the Benefit 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

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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.

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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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Testimony in Support of SB 1462

To: Senator Baker, Senator Taniguchi & Members of Commerce and Consumer Protection

From: Justin Levinson

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

I write in support of SB 1462. 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 1462 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 B 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 B 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

RE: SB1462

Hearing Date: Friday, February 11 8:30 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 SB1462, the bill that establishes a framework for the Public Benefit 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 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.

Public benefit 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

RE: SB1462

Hearing Date: Friday, February 11 8:30 am

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

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Mahalo,

Tyler Mongan
HonuGuide
Honolulu, hi 96816

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every dollar spent is a choice. choose local. choose green. choose Hawai'i

Tyler Mongan

HonuGuide

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RE: SB1462

Hearing Date: Friday, February 11 8:30 am

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Senator Brian T. Taniguchi, Vice Chair

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Additionally, I believe B Corps represent a shift in thinking among non-profit directors such as myself who wish to express our corporate social and environmental responsibility while remaining eligible for Federal Contractor status and recognition by the Small Business Administration. Thanks for your consideration.

Always with Aloha,

-Brent

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...a global model of sustainability and abundance in Hawaii.

Brent Norris | [808-896-7656](tel:808-896-7656)
<http://GreenCollarTech.com>
Hawai`i Innovation Center at Hilo
117 Keawe Street, #132 | Hilo, Hawai`i 96720

Green Collar Technologies
2010 SBA State of Hawai`i Home Based Business Champions

RE: SB1462

Hearing Date: Friday, February 6, 10:30 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,

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Mahalo,

Sophia Jemila Bowart

Director

Mohala Lehua Farm

RE: SB1462

Hearing Date: Friday, February 11 8:30 am

Commerce and Consumer Protection Committee

Senator Rosalyn H. Baker, Chair

Senator Brian T. Taniguchi, Vice Chair

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Mahalo,

Brian Bell

808-227-7087

RE: SB1462

Hearing Date: Friday, February 11 8:30 am

Commerce and Consumer Protection Committee

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Senator Brian T. Taniguchi, Vice Chair

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Chenoa Farnsworth
Farnsworth Consulting
1717 Mikahala Way
Honolulu, Hawaii 96816
(808) 381-7897

www.farnsworthconsulting.com

Hearing Date: Friday, February 11 8:30 am

Commerce and Consumer Protection Committee

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Mahalo,

Myah Ely