

SB3024

Measure Title: RELATING TO CORPORATIONS.

Report Title: Corporations

Description: Extends applicability of an action plan of a merger or share exchange to publicly traded corporations, in certain circumstances.

Companion:

Package: None

Current Referral: CPN

Introducer(s): TSUTSUI

<u>Sort by</u> <u>Date</u>		Status Text
1/25/2012	S	Introduced.
1/27/2012	S	Passed First Reading.
1/27/2012	S	Referred to CPN.
1/31/2012	S	The committee(s) on CPN added the measure to the public hearing scheduled on 02-09-12 9:00AM in conference room 229.



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**SB 3024
RELATING TO CORPORATIONS**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

FEBRUARY 9, 2012

Chair Baker and Members of the Senate Committee on Commerce & Consumer Protection:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on SB 3024, "A BILL FOR AN ACT RELATING TO CORPORATIONS." We support this bill.

Alexander & Baldwin is in the process of implementing a plan to separate itself into two independent, publicly traded companies. One company will consist of A&B's real estate and agriculture businesses, which will retain the Alexander & Baldwin name and the other company will consist of A&B's ocean transportation and logistics businesses, which will operate under the Matson name. The A&B corporate separation will result in two financially strong public companies for Hawaii, each with more than a billion dollars in assets and over a thousand employees. And each A&B shareholder will receive a share of stock in each of the two companies. Both A&B and Matson remain fully committed to meeting the needs of Hawaii for many generations to come.

The purpose of this bill is to modify the shareholder voting requirement for a plan of merger for publicly traded corporations incorporated in Hawaii before 1987. We support the intent of the bill, however we respectfully request your consideration to limit the scope of this bill to apply only to mergers of a publicly traded company with its own

subsidiary(s), when all of the outstanding shares of the subsidiary(s) are owned by the parent corporation. We have attached the following amended language for your consideration:

SECTION 1. Section 414-313, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

(f) With respect to corporations incorporated before July 1, 1987, at such meeting, a vote of the shareholders shall be taken on the proposed plan.

(1) If the plan involves a merger of a publicly traded parent corporation with or into a direct or indirect subsidiary corporation, of which all of the outstanding shares of each class are owned, directly or indirectly, by the parent, subsection (e) shall apply as if each party to the merger were incorporated on or after July 1, 1987; otherwise

(2) [The] the plan shall be approved upon receiving the affirmative vote of the holders of three-fourths of all the issued and outstanding shares of stock having voting power even though their right to vote is otherwise restricted or denied by the articles, bylaws, or resolutions of any such corporation. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control; provided that the lesser proportion shall be not less than the proportion set forth in subsection (e).

As used in this subsection (f), "publicly traded corporation" means any corporation listed on a national securities exchange.

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

The Hawaii Revised Statutes presently require corporations incorporated in Hawaii before July 1, 1987 to obtain the affirmative vote of the holders of three-fourths of all the issued and outstanding shares of stock prior to a merger. In contrast, companies incorporated in Hawaii after July 1, 1987 are only required to obtain the affirmative vote of the holders of shares of a majority of each class of shares of stock prior to a merger.

We support the above mentioned amendments, as it will enable Hawaii based, publicly traded companies, regardless of when they were incorporated, to re-organize themselves within their "family" of related entities with the approval of a majority vote of its shareholders. This majority voting threshold will be identical to the present statutory voting requirement for mergers involving all Hawaii based companies incorporated after July 1, 1987. We believe that these amendments will provide Hawaii based, publicly traded companies with the additional flexibility to restructure their organizations to better suit their operational goals, future initiatives, and to enhance their contributions to Hawaii and its economy.

Based on the aforementioned, we respectfully request your favorable consideration on this bill with the inclusion of the above referenced amendments.

Thank you for the opportunity to testify.



Maui Land & Pineapple Company, Inc.

February 9, 2012

Chair and Members of the Senate Committee on Commerce
and Consumer Protection
State Capitol
415 South Beretania Street
Honolulu, HI 96813

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

RE: S.B. 3024—Relating to Corporations

Maui Land & Pineapple Company, Inc. is a public Hawaii company, incorporated in 1909, and our stock is traded on the New York Stock Exchange (NYSE:MLP). MLP is dedicated to the creation and management of holistic communities on the island of Maui, where we own approximately 22,000 acres, including the Kapalua Resort and the 8,300-acre Pu'u Kukui Watershed Preserve, one of the largest private nature preserves in Hawai'i.

MLP strongly supports the attached amendment to S.B. 3024, Relating to Corporations, which we understand will be introduced at today's hearing. The amendment will provide public companies in Hawaii with additional flexibility in making changes to improve its efficiency over time. Most importantly, the amendment is restricted solely to mergers of wholly-owned subsidiaries, so it creates no shareholder issues. Finally, the amendment simply places public companies incorporated prior to July 1, 1987 on the very same footing as all companies incorporated after that date, with respect to mergers among wholly-owned subsidiaries.

We ask for this committee's support of the proposed amendment to S.B. 3024. Thank you kindly for your thoughtful consideration.

Sincerely,

Warren H. Haruki
Chairman & Chief Executive Officer

Proposed Amendment to SB 3024

SECTION 1. Section 414-313, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

(f) With respect to corporations incorporated before July 1, 1987, at such meeting, a vote of the shareholders shall be taken on the proposed plan.

(1) If the plan involves a merger of a publicly traded parent corporation with or into a direct or indirect subsidiary corporation, of which all of the outstanding shares of each class are owned, directly or indirectly, by the parent, subsection (e) shall apply as if each party to the merger were incorporated on or after July 1, 1987; otherwise

(2) [The] the plan shall be approved upon receiving the affirmative vote of the holders of three-fourths of all the issued and outstanding shares of stock having voting power even though their right to vote is otherwise restricted or denied by the articles, bylaws, or resolutions of any such corporation. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control; provided that the lesser proportion shall be not less than the proportion set forth in subsection (e).

As used in this subsection (f), "publicly traded corporation" means any corporation listed on a national securities exchange.

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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