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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Economic Development and Business  
Wednesday, February 6, 2019  
10:10 a.m.  
State Capitol, Conference Room 309**

**On the following measure:  
H.B. 1409, RELATING TO SUSTAINABLE BUSINESS CORPORATIONS**

Chair McKelvey and Members of the Committee:

My name is Ty Nohara, and I am the Commissioner of Securities of the Department of Commerce and Consumer Affairs' (Department) Business Registration Division. The Department offers comments on this bill.

This bill: (1) establishes two new sections in Hawaii Revised Statutes (HRS) chapter 420D that requires a sustainable business corporation (SBC) to file its annual benefit report and additional statements with the Department; and (2) gives the Department the authority to terminate the special status of an SBC if it fails to comply with HRS chapter 420D. While the Department appreciates the intent of these new sections and the desire for oversight of SBCs, it has some concerns with the implementation of this bill.

This bill requires that SBCs file their annual benefit reports and additional statements with the Department. Currently, the Department is unable to accept an additional report or statements, as significant labor and technology costs are associated

with accepting additional document types into the existing business registration database. The estimated costs are approximately \$330,000, including hardware and software upgrades, development, and labor costs.

With regards to the Department's authority to terminate the status of an SBC, the bill provides for HRS chapter 91 notice, hearing, and procedures to be effective for terminating the SBC's special status, and the notice of intent to terminate the status will give the SBC 60 days to remedy the noncompliance before the Department takes adverse action. The Department does not have the investigatory capability to make any legal or factual determinations on whether an SBC is complying with HRS chapter 420D. The Department's statutorily defined role in accepting SBC filings are purely ministerial, as stated in HRS section 420D-13 (Ministerial role of department director), which states: "Section 414-16 shall apply to any filings made by a sustainable business corporation." In turn, HRS section 414-16(d) states:

(d) The department director's duty to file documents under this section is ministerial. The department director's filing or refusing to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; and
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

However, as part of its ministerial duties, the Department is able to administratively dissolve the underlying corporation for noncompliance with business registration requirements, such as nonpayment of any fees prescribed by law, failure to file annual reports, or failing to appoint and maintain a registered agent for service of process. See HRS section 414-401.

This bill also requires the Department to modify its online business registration platform so that registered entities are searchable and identifiable according to SBC status. Currently, the Department's website lists all SBCs registered in the State.

To date, there are 21 SBCs listed; however, only ten are in compliance with business registration requirements.

Thank you for the opportunity to testify on this bill.

**HB-1409**

Submitted on: 2/3/2019 8:42:06 PM

Testimony for EDB on 2/6/2019 10:10:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
John Webster	Individual	Support	No

Comments:

**HB-1409**

Submitted on: 2/3/2019 9:07:31 PM

Testimony for EDB on 2/6/2019 10:10:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dawn Morais Webster Ph.D.	Individual	Support	No

## Comments:

As someone who has run an agency serving a variety of businesses, big and small, and as an independent consultant working on issues like kupuna care, paid family leave, tax fairness and a living wage, I have seen too much relexive opposition from businesses to public policies that serve the interests of working people even while allowing companies to profit. We need a change of mentality in how businesses are constituted and how seriously they take their corporate social responsibility to do good for the community while doing well for themselves. This bill makes it easier for businesses to learn about registering as sustainable business corporations committed to the triple bottom line and ensures that the state monitors adherence to that commitment through compliance with reporting requirements. Passage of this bill will help improve how businesses operate in Hawaii and expose more businesses to the benefits to them and the community at large if they operate as sustainable business corporations. I ask you to please support this bill. Thank you.

**HB-1409**

Submitted on: 2/4/2019 9:10:07 PM

Testimony for EDB on 2/6/2019 10:10:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Kramer	Individual	Support	No

Comments:

Chair McKelvey, Vice-Chair Kitagawa, and Members of the Committee,

I am an investment advisor exclusively focused on sustainable and socially responsible investing. I have lived on Hawaii Island since 1999. My firm, Natural Investments is a Founding B Corp ([www.bcorporation.net](http://www.bcorporation.net)), abiding by the most stringent standards of socially and environmentally responsible business in the nation. I was part of the original effort to establish the Sustainable Business Corporation designation for Hawaii-registered corporations that passed into law in 2011. At the time, the Department of Commerce and Consumer Affairs only agreed to support the bill if there would be no administrative tasks given to the Department. As such, the law went into effect, and here we are 8 years later and there is nothing to be found on state government websites explaining what the SBC designation is, how one can apply, or how compliance with its provisions are enforced. Given that the purpose of the statute is to highlight businesses that are independently verified by a third party to operate in the interests of owners as well as other stakeholders such as employees, the community, and environment, it is critical that the DCCA website explain what this initiative is about and enable the public to search the DCCA database to find such corporations. After all, the point here is to honor the leadership of these businesses and recognize that they are good for society, not only in terms of their benefits to people and communities but their liabilities and negative impacts in their operations are small and don't require taxpayers to address and mitigate them later at great cost to government. These businesses are models of triple-bottom-line behavior, and as such the DCCA needs to be instructed to take the designation seriously by helping people understand what the designation means, how to apply, and how compliance is monitored and enforced.

In addition, it is my hope that you will consider amending this bill in order to incentivize applications for the designation via special financial considerations such as a reduced GE tax rate or other tax breaks. Again, the rationale for this is that these businesses, by operating for the benefit of multiple stakeholders and minimizing negative impacts on society and the environment, are sufficiently beneficial to Hawaii so as to qualify them for a tax reduction. If we want businesses to do the right thing, sometimes we need to reward them financially for taking special, unselfish steps that combine social and environmental purpose with profit.

Mahalo for your consideration,

Michael Kramer

Managing Partner, Natural Investments

Founder, Kuleana Green Business Program of the Kona-Kohala Chamber of Commerce

Founder, HI Impact

Co-Founder, Impact Hub Honolulu

**HB-1409**

Submitted on: 2/5/2019 10:03:47 AM

Testimony for EDB on 2/6/2019 10:10:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Individual	Support	No

Comments:



**HB-1409**

Submitted on: 2/5/2019 10:09:51 AM

Testimony for EDB on 2/6/2019 10:10:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ian Chan Hodges	Individual	Support	No

Comments: