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OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Judiciary
Wednesday, February 24, 2021
9:45 a.m.
Via Videoconference**

**On the following measure:
S.B. 193, S.D. 1, RELATING TO EQUITABLE
GENDER REPRESENTATION ON CORPORATE BOARDS**

WRITTEN TESTIMONY ONLY

Chair Rhoads and Members of the Committee:

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

The purposes of this bill are to: (1) require publicly held domestic corporations to have a gender-diverse board of directors; and (2) establish reporting requirements¹ for the Department and penalties.

The Department has the following concerns about the bill's reporting requirements:

¹ This bill requires the Department to publish a report on its website no later than July 1, 2024, documenting the number of all publicly held domestic corporations whose principal executive office is located within the State that have at least one male or non-binary director and one female or non-binary director.

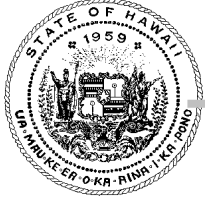
1. The Department obtains information about a corporation through the forms and other documents that the corporation files with BREG. However, none of BREG's current forms request the information this bill requires. For example, BREG's forms do not ask a corporation to: identify whether it is a publicly held corporation; indicate the total number of directors on the corporation's board of directors; or identify the gender of each of its directors. Therefore, BREG's current forms would need to be revised, and entirely new forms would need to be created, to request all of the information this bill requires.
2. For BREG, the process of revising existing forms and creating new forms under its current document processing system is extremely intricate, mainly because BREG provides its customers with the user-friendly option of filing forms online. While online filing appears simple and straightforward, the myriad forms, documents, and transactions that BREG processes are supported by a highly complex "back end" management and documents processing system. The system adjustments necessary to revise BREG's current forms and create new forms are highly complex, criteria-specific, and would require specialized IT services. Consequently, if BREG will need to revise its current forms, create new forms, and collect data in accordance with this bill, it respectfully requests an appropriation to contract for those services.
3. This bill does not define "non-binary," and BREG is not aware of any such definition in the Hawaii Revised Statutes. Without any definition, a corporation's report of a director's gender (i.e., whether a director is male, female, or non-binary) may be unintended or even mistaken, thereby resulting in unreliable data for BREG's reporting purposes.

In addition, this bill expands BREG's authority beyond its ministerial duty to file documents. Inevitably, BREG will require the establishment of new positions to review and verify information that a corporation must report to comply with this bill. Even assuming that new positions are established, the extent of the duties BREG must

perform to verify the information provided by a corporation remains unclear. (In other words, would BREG simply be able to take a corporation at its word that it is complying with this bill? If no, what would BREG ask a corporation to proffer to verify its requisite amount of gender representation on its board?)

Finally, and most importantly, this bill authorizes BREG to impose monetary fines on corporations that do not comply with this bill. However, absent any standards to verify whether a corporation is compliant, BREG will not be able to enforce this bill.

Thank you for the opportunity to testify on this bill.



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 24, 2021
Videoconference, 9:45 a.m.

To: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Members of the Senate Committee on Judiciary

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 193, S.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

S.B. No. 193, S.D.1, would amend the HRS to add a new section to Chapter 414 to require gender diversity on boards of publicly held domestic corporations, requiring these corporate boards to include male or non-binary individuals and female or non-binary individuals among the directors. The bill also would require subject corporations to submit compliance reports to the Department of Commerce and Consumer Affairs, with penalties for non-compliance and failure to report. The bill requires the Department of Commerce and Consumer Affairs shall publish a report documenting the number of publicly held corporations within Hawai‘I what have at least one male or non—binary director and one female or non—binary director.

The HCRC supports the intent of S.B. No. 193, S.D.1, with concern that the bill is limited in scope to require gender diversity, but does not address racial and ancestry diversity.

The HCRC supports gender diversity in all aspects of social and economic activity, and supports this legislation as a start, by increasing diverse representation on boards of publicly held corporations. While Hawai'i has only a small number of covered publicly held corporations, increasing gender equity is important, and this is a step towards that goal.

The HCRC supports the intent of S.B. No. 193, S.D.1.

SB-193-SD-1

Submitted on: 2/19/2021 12:47:15 PM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
nanci kreidman	Testifying for domestic violence action center	Support	No

Comments:

aloha,

we know the world and all her people are better off when there are voices of women included in the discourse. gender equity leads to many favorable outcomes.

thank you for supporting this Bill.

love, nanci kreidman

SB-193-SD-1

Submitted on: 2/22/2021 9:09:58 AM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Testifying for Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

Planned Parenthood Votes Northwest and Hawaii supports SB 193.



of Hawaii

To: Hawaii State Senate Committee on Judiciary
Hearing Date/Time: Wednesday February 24, 9:45AM
Place: Hawaii State Capitol, Video Conference Room
Re: Testimony in STRONG SUPPORT of S.B. 193 SD1

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

Members of AAUW of Hawaii are grateful for this opportunity to testify in strong support of S.B. 193 SD1, which would require publicly held domestic corporations to include male, female, non-binary individuals among the directors of their corporate board.

Corporations have much to gain with gender diversity in leadership - better profit, better employee job satisfaction and productivity, better reputation to name a few.¹ Yet, women hold only 20% of corporate board positions.² For Asian, black, and Hispanic women, the problem is even more acute. Fewer than 3% of board directors at Fortune 500 companies are women from these groups. Statistics about lesbian, bisexual, and transgender (LBT) women leaders are not readily available, but a recent study found that women whose resumes indicated they were LBT received 30 percent fewer callbacks than other women, which suggests that LBT status may further limit leadership opportunities.³

Why? It's not the pipeline problem. Women are now the majority in U.S. labor force and college educated labor force: 50.04% of U.S. labor force is women and in 2019⁴, 29.5 million women in U.S. labor force had at least a bachelor's degree compared to 29.3 million men.⁵ Blatant gender discrimination is still a problem, as data from the U.S. Equal Employment Opportunity Commission shows. Unconscious or implicit bias is also the problem. Negative stereotypes about women in

¹ <https://www.catalyst.org/research/why-diversity-and-inclusion-matter/>

² <https://www.catalyst.org/research/women-on-corporate-boards/>

³ <https://www.aauw.org/resources/research/barrier-bias/>

⁴ <https://www.wsj.com/articles/women-overtake-men-as-majority-of-u-s-workforce-11578670615>

⁵ <https://www.pewresearch.org/fact-tank/2019/06/20/u-s-women-near-milestone-in-the-college-educated-labor-force/>

leadership, hostile work environment, lack of flexibility all keep women out of top leadership spots but the policymakers can make the difference.⁶

Please join California legislators who passed a law⁷ in 2018 and Illinois legislators who passed a law⁸ in 2019 to require all publicly traded companies to include women. Not only would gender diversity on corporate boards lead to better profit, it would lead to flexible work environment which would benefit all working families and it would challenge harmful gender stereotypical ideas.

The American Association of University Women (AAUW) of Hawaii is a state-wide organization made up of six branches (Hilo, Honolulu, Kauai, Kona, Maui, and Windward Oahu), and over 3800 members and supporters statewide. As advocates for gender equity, AAUW of Hawaii promotes the economic, social, and physical well-being of all persons.

Please pass this important measure, for businesses, for women leaders, and also for all working families. Mahalo.



Younghee Overly
Public Policy Chair, AAUW of Hawaii
publicpolicy-hi@aauw.net

⁶ <https://www.aauw.org/resources/research/barrier-bias/>

⁷ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB826

⁸ <https://legiscan.com/IL/bill/HB3394/2019>



Hawaii Women's Coalition

To: Hawaii State Senate Committee on Judiciary
Hearing Date/Time: Wednesday February 24, 9:45AM
Place: Hawaii State Capitol, Video Conference Room
Re: Testimony in STRONG SUPPORT of S.B. 193 SD1

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

Members of Hawaii Women's Coalition are grateful for this opportunity to testify in strong support of S.B. 193 SD1, which would require publicly held domestic corporations to include male, female, non-binary individuals among the directors of their corporate board.

As indicated in various research reports included in this measure, corporations have much to gain with gender diversity in leadership – better profit, better employee job satisfaction, better reputation, and better at creating a sustainable future to name few. Yet, women hold only 20% of corporate board positions, an increase from 15% in 2016 and a ripple effect of California's new law requiring female directors¹. Small nonprofit boards are packed with women but only 33% of boards of nonprofits with incomes of \$25 million or more are women.²

Why? Blatant gender discrimination is still a problem, as data from the U.S. Equal Employment Opportunity Commission shows. Unconscious or implicit bias is also the problem. Negative stereotypes about women in leadership, hostile work environment, lack of flexibility all keep women out of top leadership spots but the policymakers can make the difference.³ It's not the pipeline problem. Women are now the majority in U.S. labor force and college educated labor force: 50.04% of U.S. labor force is women and in 2019, 29.5 million women in U.S. labor force had at least a bachelor's degree compared to 29.3 million men. It's also not the "women's choice" problem. The very outdated notion that women with young children cannot be on a "leadership track" excludes a whole group from leadership opportunities, which in turn would hurt both the businesses, organizations and women leaders.⁴

The Hawai'i Women's Coalition is a catalyst for progressive, social, economic and political change through action on critical issues facing Hawaii's women and girls. Members currently include 29 organizations and agencies (private, public, membership) as well as individuals. The coalition encourages the inclusion of interested parties and in achieving equitable representation.

Please pass this important measure, for businesses and non-profit organizations, and for women leaders. Mahalo.

Younghee Overly (on behalf of Hawaii Women's Coalition)

¹ <https://www.wsj.com/articles/womens-share-of-board-seats-rises-to-20-11568194200>

² <https://nonprofitquarterly.org/women-in-power-or-not-so-much-gender-in-the-nonprofit-sector/>

³ <https://www.aauw.org/resources/research/barrier-bias/>

⁴ <https://www.aauw.org/app/uploads/2020/03/Barriers-and-Bias-nsa.pdf>

SB-193-SD-1

Submitted on: 2/19/2021 2:49:49 PM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

THIS is RACIST. The Government and any Board that allows this should be SUDED.

SB-193-SD-1

Submitted on: 2/20/2021 8:08:11 PM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Karl Rhoads, Vice Chair Jarrett Keohokalole and Committee on Judiciary,

Please pass SB193.

California was the first state in the U.S. (2018) to legislatively mandate quotas for women on publicly held boards, after unsuccessfully attempting an aspirational approach in 2013 (through Resolution 62), which encouraged corporate boards to establish gender diversity through self-regulation.

Currently, an additional fourteen states have passed or proposed legislation to establish gender diversity on corporate boards.

The states that have passed “hard law” legislation are California and Washington. Massachusetts, Michigan, New Jersey, and Hawaii have pending hard law legislation. The states that have passed “soft laws” or resolutions are Illinois, Maryland, Pennsylvania, and New York. Hawaii and Ohio have pending soft laws/resolutions. States with other proposals for gender diversity in board governance are Iowa, Nebraska, Vermont, and Colorado.

Companies with the most women on their boards outperform those with the least by 26 percent, based on measures that show return on invested capital.

Women board members bring strengths that produce significant company growth: deep knowledge of target customers, ability to champion discussion of tough issues, and talent management practices that lead to increased productivity.

Gender diversity quota legislation fosters justice, quality, and increased financial performance and productivity on corporate boards.

Thank you for your time and attention to this issue. I appreciate the opportunity to provide testimony in support of SB193.

Mahalo,

Caroline Kunitake

Testimony in Support of SB 193 SD1
Committee on Judiciary
February 22, 2021

Aloha Chair Rhoads, Vice Chair Keohokalole and Committee Members,

My name is Eliza Talbot. I am a Hawai'i resident and a former state employee, former city employee and currently, I work for a local private company here on O'ahu. Today, I testify, as an individual in support of **SB 193 (and HB 1077), which requires publicly held domestic and foreign corporations to include all genders among their corporate boards of directors.**

I support this legislation for several reasons:

- 1) In my personal experience, although there are women board members serving in many Hawai'i corporations, there is still a need to increase their representation as well as the representation of non-male and non-female genders. Women are now the majority in U.S. labor force and college educated labor force: 50.04% of U.S. labor force is women and in 2019, 29.5 million women in U.S. labor force had at least a bachelor's degree compared to 29.3 million men (Pew Research, 2019). Additionally, although we have many brilliant women leaders in Hawai'i, the same handful of women seem to be selected to serve on multiple boards.

*For this reason, I ask that the Senate consider **amendments to the bill** that would (a) limit the number of corporate boards one person can serve simultaneously and (b) require corporations to have at least one board member or ex officio member that is under the age of 45 in order to increase diversity and provide young leaders with much needed board experience.*

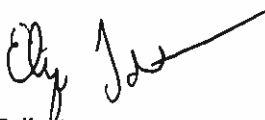
- 2) **Numerous studies confirm that publicly held companies perform better when women are represented on their boards:**

- A 2017 study by MSCI found that United States' companies that began the five-year period from 2011 to 2016 with three or more female directors reported earnings per share that were 45 percent higher than those companies with no female directors at the beginning of the period.
- In 2014, Credit Suisse found that companies with at least one woman on the board had an average return on equity (ROE) of 12.2 percent, compared to 10.1 percent for companies with no female directors. Additionally, the price-to-book value of these firms was greater for those with women on their boards: 2.4 times the value in comparison to 1.8 times the value for zero-women boards.
- A 2012 University of California, Berkeley study called "Women Create a Sustainable Future" found that companies with more women on their boards are more likely to "create a sustainable future" by, among other things, instituting strong governance structures with a high level of transparency.

- Credit Suisse conducted a six-year global research study from 2006 to 2012, with more than 2,000 companies worldwide, showing that women on boards improve business performance for key metrics, including stock performance. For companies with a market capitalization of more than \$10 billion, those with women directors on boards outperformed shares of comparable businesses with all-male boards by 26 percent.
- 3) ***Additional studies indicate that having three women on the board, rather than just one or none, increases the effectiveness of boards, including:***
- According to the study entitled “Women Directors on Corporate Boards From Tokenism to Critical Mass,” by M. Torchia, A. Calabrò, and M. Huse, published in the Journal of Business Ethics in 2011, and a report entitled “Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance,” attaining critical mass, going from one or two women directors to at least three women directors, creates an environment where women are no longer seen as outsiders and are able to influence the content and process of board discussions more substantially.
 - Boards of directors need to have at least three women to enable them to interact and exercise an influence on the working style, processes, and tasks of the board, in turn positively affecting the level of organizational innovation within the firm they govern.
 - A 2016 McKinsey and Company study entitled “Women Matter” showed nationwide that companies where women are most strongly represented at board or top-management levels are also the companies that perform the best in profitability, productivity, and workforce engagement.
 - Companies with three or more women in senior management functions score even more highly, on average, on the organizational performance profile, than companies with no women on boards or in the executive ranks. When there are at least three women on corporate boards with an average membership of 10 directors, performance increases significantly.

Mahalo for your consideration of this important legislation!

With Aloha,



Eliza Talbot
Kapolei

SB-193-SD-1

Submitted on: 2/22/2021 2:27:14 PM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nadine NEWLIGHT	Individual	Support	No

Comments:

Please require equitable gender representation on corporate boards! Statistically, gender-paired boards represent corporations with 30% greater earnings after parity is achieved. Hawai'i needs this. Mahalo.

Hearing Date: Thursday, February 24, 2021, 9:45 AM

To: SENATE COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Jarrett Kaohokalole, Vice Chair

From: Jean Evans, MPH (Individual) jevans9999@yahoo.com, 808-728-1152
99-1669 Hoapono Pl., Aiea, Hi 96701

**RE: TESTIMONY IN SUPPORT OF SB 193,SD1 RELATING TO EQUITABLE
GENDER REPRESENTATION ON CORPORATE BOARDS**

My name is Jean Evans. I retired after 40 years holding executive positions in several Hawaii non-profit agencies and received both my baccalaureate and graduate degrees from the University of Hawaii at Manoa.

I am in strong support of SB 193,SD1 Relating to Equitable Gender Representation of Corporate Boards in Hawaii.

While women make up over half of the US labor force and earn more college and graduate degrees than men, the make-up of corporate boards consists predominately of males - the majority of whom are white. While women have made some gains, the trend is very slow. According to the 2018 Board Diversity Census from the Alliance for Board Diversity and the consulting firm Deloitte, women held just 22% of Fortune 500 seats in 2018, compared to 20% a year earlier and 16% in 2010. White men held 66% of Fortune 500 board seats in 2018. Black people held nearly 9% of seats in 2018, compared with nearly 8% in 2010.

It makes good business sense for corporate boards to have gender parity. It is unlikely that businesses can understand their customers and employees' needs, wants and challenges and continue to thrive unless those sitting at the board table actually reflect these groups. Many companies understand this and have taken steps toward achieving gender parity; however, the majority need a bit of a push.

As a positive step, the Nasdaq filed a proposal in December of 2020 with the U.S. Securities and Exchange Commission on Tuesday, that would require all companies listed on the exchange to publicly disclose consistent, transparent diversity statistics about their board of directors. It would require those companies to have, or explain why they don't have, at least two diverse directors. This includes having one board member who self-identifies as female and one who self-identifies as either an underrepresented racial minority or LGBTQ.

It is time Hawaii assists corporations with a push in achieving board gender parity by passing this important measure.

Mahalo for allowing me to submit my testimony today.

Jean Evans

Bill Number - SB 193, SD1 Relating to Equitable Gender Representation on Corporate Boards
Committee: Senate Committee on Judiciary
Hearing Date, Time, Room: Tuesday, February 23, 2021, 9:45 am

Dear Chair: Senator Karl Rhoads, Vice Chair: Senator Jarrett Keohokalole and Members of the Committee:

Thank you for the opportunity to testify in support of SB 193.

What the Gender Equity on Corporate Boards Bill Will Do:

Require publicly held domestic and foreign corporations to include non-male and non-female individuals among their boards of directors.

Why Gender Equity on Corporate Boards is Beneficial:

Corporations have much to gain with gender diversity in leadership: better profit, better employee job satisfaction and productivity, and better reputation, to name a few.¹

A 2017 study by MSCI found that the U.S. companies with three or more female directors reported earnings per share that were 45% higher than earnings for companies with no female directors.²

Why the Gender Equity on Corporate Boards Bill is Needed:

Despite women's impressive gains in education and the workplace over the past 50 years, men greatly outnumber women in leadership positions. In 2019 women held 20% of corporate board positions³.

Despite all the business benefits, the leadership gender gap is significant, persistent, and systemic. Women's representation in leadership will not increase substantially without major changes in the culture, policies, and practices of the organizations where women learn and work.

We need public policies to ensure that employers do the right thing.

Will the Gender Equity on Corporate Boards Bill Make a Difference?

A California law signed in September 2019 required all publicly traded companies with headquarters in the state to have at least one woman on their boards by the end of the year or face fines. By September 11, 68% of the 94 public companies in the state with all-male boards when the law passed had added at least one woman.³

We need SB 193 to advance gender equity on corporate boards in Hawaii

Janet Morse,
AAUW Hawaii member
Kailua, Oahu

¹ <https://www.catalyst.org/research/why-diversity-and-inclusion-matter/>

² <https://www.msci.com/documents/10199/fd1f8228-cc07-4789-acee-3f9ed97ee8bb>

³ <https://www.wsj.com/articles/womens-share-of-board-seats-rises-to-20-11568194200>



February 22, 2021

Senator Karl Rhoads, Chair
Senate Committee on Judiciary

Re: S.B. 193 S.D.1, Relating to Equitable Gender Representation on Corporate Boards

Hearing: February 24th, 2021, 9:45 a.m. via Zoom

Dear Chair Rhoads and Members of the Committee:

Hawaii Women Lawyers (“HWL”) submits testimony **in support** of S.B. 193, S.D.1 Relating to Equitable Gender Representation on Corporate Boards, which would require publicly held domestic corporations to have a gender-diverse board of directors.

HWL is a 501(c)(6) nonprofit corporation founded in 1982. HWL’s core mission is to improve the lives and careers of women in all aspects of the legal profession, influence the future of the legal profession, and enhance the status of women and promote equal opportunities for all. HWL is currently comprised of approximately 300 members.

HWL supports efforts to create gender equity on boards and to provide equal opportunities for women in leadership positions. As part of HWL’s education and professional development efforts, we have hosted forums regarding gender parity both within the legal profession and on corporate boards.

We support the intent of this bill, which highlights that as a community, we still have a long way to go to achieve gender equity on corporate boards. HWL firmly believes that we should continue to affirmatively pursue opportunities to promote gender balance in leadership positions. There are many talented and capable women in our community who are ready and able to serve.

We encourage the discussion on this topic to continue, and respectfully request that the Committee pass this measure.

LATE

SB-193-SD-1

Submitted on: 2/24/2021 2:48:27 AM

Testimony for JDC on 2/24/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Individual	Support	No

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole and members,

Strong support for this measure. Women will never achieve equity so long as we are under-represented or un represented on boards and in board rooms.

Please pass this important bill,

Mahalo, Ann S. Freed, Co-Chair Emeritus, Hawaii Women's Coalition