



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, January 31, 2023
9:05 a.m.
State Capitol, Conference Room 229

On the following measure:
S.B. 174, RELATING TO RELATING TO EQUITABLE GENDER REPRESENTATION
ON CORPORATE BOARDS

Chair Keohokalole and Members of the Committee:

My name is Ty Nohara, and I am the Acting Commissioner of Securities and head of the 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 and enforcement requirements:

¹ This bill requires the Department to publish a report on its website no later than July 1, 2026, 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. This bill does not define “non-binary,” and BREG is not aware of any such definition in the Hawaii Revised Statutes (HRS). Nor does this bill consider one’s “gender identity.” Without any such definition or guidance, a corporation’s report of a director’s gender (i.e., whether a director is male, female and/or non-binary) may be unintended or even mistaken, thereby resulting in unreliable data for BREG’s reporting purposes.
2. 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.
3. The specific information that BREG requests from a corporation in its current forms are required by statute. Consequently, the HRS will need to be amended to allow for the collection of the information that is necessary for BREG’s reporting purposes, determination of compliance, and imposition of penalties for non-compliance.
4. BREG’s current authority to file documents delivered by a corporation is ministerial. As such, BREG does not verify the correctness or validity of the information contained in the document. Rather, BREG’s “registration” of a corporation simply means that the corporation has satisfied the requirements for its legal existence to transact business in the State. Consequently, the HRS will need to be amended to expand BREG’s authority so that it may determine compliance and impose penalties for non-compliance.
5. Even assuming this bill expands BREG’s authority beyond its ministerial duty to file documents, it is inevitable that BREG will require the

establishment of new positions to review and verify information that a corporation must report to comply with this bill. And, 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?)

6. 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.
7. BREG's current authority to impose penalties against a corporation are narrow in scope and limited by the Hawaii Administrative Rules (HAR). Consequently, the HAR will need to be amended to expand BREG's authority to impose penalties against a corporation for non-compliance.
8. In light of the foregoing concerns, and taking into consideration the significant time that is anticipated in order for the necessary amendments to HRS and HAR to take effect, as well as the implementation of procedures to enforce any violations that may result from a corporation's failure to comply with the provisions of this bill, the Department respectfully submits that the first reporting deadline of July 1, 2026 may be difficult to meet. Moreover, it is unclear as to what time period or effective date should be covered for purposes of BREG's first reporting deadline. It is also unclear what time period or effective date is covered under BREG's subsequent annual reporting deadlines. Consequently, if the Committee chooses to pass this measure, the Department respectfully submits that the first reporting deadline set forth in subsection (c) on page 4, line 11, be deferred at least to July 1, 2027, to allow BREG sufficient time to determine and implement the requirements of this bill, and the second

Testimony of DCCA

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reporting deadline set forth in subsection (d) on page 4, line 17, also be deferred accordingly.

Thank you for the opportunity to testify on this bill.

SB-174

Submitted on: 1/27/2023 7:22:13 PM

Testimony for CPN on 1/31/2023 9:05:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Golojuch Jr	Testifying for Stonewall Caucus of the Democratic Party of Hawaii	Support	Remotely Via Zoom

Comments:

Aloha Senators,

The Stonewall Caucus of the Democratic Party of Hawai‘i; Hawai‘i’s oldest and largest policy and political LGBTQIA+ focused organization fully supports SB 174.

We hope you all will support this important piece of legislation.

Mahalo nui loa,

Michael Golojuch, Jr.
Chair and SCC Representative
Stonewall Caucus for the DPH

SB-174

Submitted on: 1/27/2023 3:27:25 PM

Testimony for CPN on 1/31/2023 9:05:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

This is long overdue. I am a shareholder i several Hawaii based corporations. Thirty or so years ago I complained at one annual meeting that there were no women on their board. It took several years but that changed. Several years ago I made the same complaint at two other annual meetings. That has been rectified I had the feeling that the all male boards did not want women on the board and used the excuse that there weren't any qualified candidates. Surprise! When chastened they changed their tune. There are at least two publicly traded local firms which have higher female representation that you are asking for. This is a good start. If they are qualified they should be asked to serve.

lynne matusow

SB-174

Submitted on: 1/27/2023 3:31:25 PM

Testimony for CPN on 1/31/2023 9:05:00 AM

Submitted By	Organization	Testifier Position	Testify
Victor K. Ramos	Individual	Oppose	Written Testimony Only

Comments:

Strongly oppose. Selection should be based on ability.

SB-174

Submitted on: 1/27/2023 5:26:33 PM

Testimony for CPN on 1/31/2023 9:05:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Testifying for Rainbow Family 808	Support	Written Testimony Only

Comments:

We support SB174.

Mike Golojuch, Sr, Secretary/Board Member



To: Senate Committee on Commerce and Consumer Protection
Hearing Date/Time: January 31st, 2023 9:05AM
Place: Hawaii State Capitol, Room 229
Re: Testimony in STRONG SUPPORT of S.B.174

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

Members of AAUW of Hawaii thank you for this opportunity to testify in strong support of S.B. 174, 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 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 leadership, hostile work environment, lack of flexibility all keep women out of top leadership spots but the policymakers can make the difference.⁶

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/>

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



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 a 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 an all volunteer, statewide chapter of a national organization and is made up of six branches: Hilo, Honolulu, Kaua'i, Kona, Maui, and Windward Oahu. UH Hilo, UH Manoa, UH Maui College, and Windward Community College are also AAUW partners. AAUW's mission is to advance gender equity for equal opportunities in education, at workplace and for economic security, and in leadership.

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

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

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



**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
January 31, 2023**

**Re: SB 174 RELATING TO EQUITABLE GENDER REPRESENTATION
ON CORPORATE BOARDS**

Good morning, Chair Keohokalole and members of the Senate Committee on Consumer Protection and Health. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901 and is a statewide, not for profit trade organization committed to supporting the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, on-line sellers, local, national, and international retailers, chains, and everyone in between.

We appreciate the intent of SB 174 Relating to Equitable Gender Representation on Corporate Boards. This measure requires publicly held domestic corporations to have gender-diverse boards of directors. Establishes reporting requirements for the Director of Commerce and Consumer Affairs. Establishes penalties.

While we understand the reasoning behind this measure, we are also cautious that Board members should be qualified to serve on the boards and able to provide leadership as well as to extend their experience. Qualifications should not be based solely on the sex or gender of the person.

Mahalo again for this opportunity to testify.