



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

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

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DEPUTY DIRECTOR

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

**Before the  
Senate Committee on Judiciary  
12:15 p.m.  
State Capitol, Conference Room 016**

**On the following measure:  
S.B. 2636, S.D. 1, RELATING TO GENDER EQUITY**

**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 (BREG). The Department offers comments on this bill.

The purposes of S.D. 1 are to: (1) require publicly held domestic and foreign corporations to include a certain number of women among the directors of their corporate boards; and (2) authorize administrative fines for noncompliance.

Subsection (d) on page 3, line 19 to page 4, line 5 requires the Department to publish a report on its website no later than July 1, 2020, documenting the number of domestic and foreign corporations that have: (1) a principal executive office located within the State; and (2) at least one female director. BREG does not currently maintain this type of information about a corporation, as the division obtains corporation information to the extent it is required by statute. For BREG to obtain the information

subsection (d) requires, BREG would need to change its existing forms or create a new form, and corporations would need to provide this data to BREG. Therefore, the proposed July 1, 2020, deadline would be difficult to meet.

Also, subsection (d) is unnecessarily broad in scope, as it does not distinguish between publicly held corporations and private corporations. The assumption is that BREG must obtain the requested information from all registered corporations. Since this bill purports to apply only to publicly held corporations, BREG suggests revising the scope of subsection (d) to match the remainder of the bill.

BREG has a high volume of documents that it processes on a daily basis and has been a leader in providing user-friendly online filing and search options for its many customers. While the user experience appears simple and straightforward, the myriad documents and transactions that BREG processes are supported by a highly complex “back end” management and documents processing system. The system adjustments that this bill would require would be extensive and would require revisions to BREG’s basic forms, especially if the work must be completed within a narrow timeframe. Consequently, if BREG will need to revise its forms and collect data in the manner contemplated by this bill, it respectfully requests an appropriation to contract for those services.

If the Committee chooses to pass this measure, the Department strongly urges that the first reporting deadline set forth in the bill be deferred to January 2023, to allow BREG sufficient time to comply with the requirements of S.D. 1.

Thank you for the opportunity to testify on this measure. I would be happy to answer any questions the Committee may have.



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2020**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2636, S.D. 1, RELATING TO GENDER EQUITY.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 25, 2020      **TIME:** 12:15 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):**      **WRITTEN TESTIMONY ONLY.**

(For more information, contact Christopher J.I. Leong,  
Deputy Attorney General, at 586-3092)

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to require publicly held domestic and foreign corporations to include a certain number of women among the directors of their corporate boards. The bill also authorizes administrative fines for noncompliance.

The application of this bill to foreign corporations may be subject to challenge under the internal affairs doctrine of the Commerce Clause of the United States Constitution (article I, section 8). Although the bill would apply only to those foreign corporations whose principal executive office is located within the State, the United States Supreme Court has explained that a corporation's internal affairs, such as how its board of directors is composed or how shareholder elections are handled, are to be governed solely by the law of the corporation's state of incorporation and not by any other state, including the one where it may be headquartered. See *Edgar v. MITE Corp.*, 457 U.S. 624, 645-46 (1982); *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69, 89 (1987).

To avoid a constitutional challenge, we recommend deleting the phrase "and foreign" on page 2, line 16 and page 4, line 1, the phrase "or foreign" on page 3, lines 3 and 7, and section 3 of the bill on page 6, line 14 through page 7, line 3.

The new section added to chapter 414, Hawaii Revised Statutes (HRS), by section 2 of the bill will require applicable corporations to have at least one, two, or three or more female directors depending on the corporation's total number of directors.

The bill thus creates an explicit gender-based classification that may implicate the Equal Protection Clauses of the United States Constitution (Fourteenth Amendment) and the Constitution of the State of Hawai'i (article I, section 5). The State of California recently passed a bill with similar effect that is now the subject of litigation.

To avoid similar challenges, we suggest that the interest in diversifying corporate board membership can be achieved by using gender-neutral language. For example, the mandate of a certain number of female directors could be changed to a mandate for a certain number of directors whose gender is different than that of the remaining directors on the board.

Thank you for the opportunity to provide comments.

**SB-2636-SD-1**

Submitted on: 2/21/2020 3:46:33 PM

Testimony for JDC on 2/25/2020 12:15:00 PM

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

Comments:

**SB-2636-SD-1**

Submitted on: 2/23/2020 9:27:51 AM

Testimony for JDC on 2/25/2020 12:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Testifying for American Association of University Women - Hawaii State	Support	No

Comments:

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

The American Association of University Women (AAUW) Hawaii Members support SB2636 SD1.

AAUW is the nation's leading voice promoting equity and education for girls and women. Since our founding in 1881, AAUW members have examined and taken positions on the fundamental issues of the day - education, social, economic and political.

Women are less likely than men to be in leadership positions. In universities, businesses, courts, unions, and religious institutions, male leaders outnumber female leaders by wide margins. According to the Rutgers Center for American Women and Politics, Eagleton Institute of Politics at Rutgers University, approximately 63% of executives are White men, 24% are White women, 2% are Black women, 1% are Hispanic women, 1% are Asian women, and <1% are women of other racial and ethnic groups.

Why is there a gender leadership gap? Blatant sex discrimination is still a problem, as data from the U.S. Equal Employment Opportunity Commission shows. Unconscious or implicit bias can cloud judgement in ways people are not fully aware of. Less obvious reasons for the lack of gender parity include hostile work environments, negative stereotypes about women in leadership, and bias against women keep women out of top leadership spots. The AAUW report, *Barriers and Bias: The Status of Women in Leadership*, examines the causes of women's underrepresentation in leadership roles in business, politics, and education and suggest what we can do to change the status quo (<https://www.aauw.org/research/barriers-and-bias/>).

We need more women leaders to be part of the board of directors for publicly held domestic and foreign corporations to achieve gender parity. Publically held domestic and foreign corporations fail to recognize the purchasing/consumer power of women on a global level. These corporations need to achieve gender parity within their board of

directors in order to better understand the needs and wants of women consumers. This change in the gender diversity of leadership will draw on the the creative talents of women to maximize markets, customer satisfaction, profits and employee satisfaction.

Gender parity in leadership will positively change the negative stereotypical ideas about gender roles. Just as the status quo is holding women back from leadership roles, it is holding men back from embracing caretaking and support roles. Working families, whether they rely on women as the sole breadwinner or have a two-earner income, will benefit from women leaders who will foster flexibility and fair expectations for working men and women, promote more women into top leadership positions and enforce fair corporate policies to improve gender diversity in management/executive leadership.

Mahalo,

Caroline Kunitake

AAUW Honolulu Branch Board Member and AAUW State Public Policy Committee  
Member

Presentation to The  
Committee on Judiciary  
February 25, 2020 12:15 A.M  
State Capitol Conference Room 016

**Testimony in Support of SB 2636, SD 1 With Comments**

TO: The Honorable Karl Rhoads, Chair  
The Honorable Jarrett Keohokalole, Vice Chair  
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eight Hawaii banks and two banks from the continent with branches in Hawaii.

The Hawaii Bankers Association supports the concept of gender equity for publicly traded banks, and in fact, the four publicly traded banks in Hawaii currently all have at least one female director on the board of the publicly traded bank holding company.

However, there are some practical considerations which must be addressed.

First, the definition of “publicly held corporation” could be improved as currently, it is defined as a corporation whose shares are listed on a “major United States stock exchange” but it is not clear what are major stock exchanges. I think it is fair to say that the New York Stock, NASDAQ Global Select, NASDAQ Global, BATS Global Market, and American stock exchanges are major stock exchanges. There is severe doubt whether the NASDAQ Capital Market exchange, or the OTC Bulletin Board (OTCBB) and the OTC Markets (formerly known as the Pink Sheets) would be considered a major stock exchange.

Thus, rather than using the term “major United States stock exchange, it may be easier to list New York stock exchange, NASDAQ Global Select, NASDAQ Global, American Stock Exchange and BATS Global Market.

The foregoing issue does not affect the Hawaii banks, but it could affect a smaller company which may wonder if they are subject to this bill because they are listed in another stock exchange other than those listed in the preceding paragraph.

There are other practical considerations to consider. A corporation cannot merely add another director but to change the number of directors on the board, shareholder approval is needed under Delaware law and probably in other states. I reference Delaware because many publicly traded companies are incorporated in Delaware, including at least one in Hawaii. Also, while the nominees for directors are usually selected by a nominating committee of the current board of directors, the ultimate power to select a director is held by shareholders who vote at the annual meeting. Normally, the shareholders



do approve the slate of directors although it is possible for someone to nominate another person to be on the board of directors.

Another practical hurdle is that some corporations prefer that the number of directors on the board be an odd number to avoid an equally split vote. Thus, a corporation may have to nominate two qualified persons for board positions which will complicate the search for directors and the timing thereof.

To accommodate the practical considerations, we recommend changes in the timeline on page 3, line 6, to read: "Beginning July 1, 2024, . . .", instead of reading "Beginning no later than December 31, 2022;". That would be a delay of a year and a half in the timeline. The July date is selected to allow for an annual meeting of shareholders to vote on election of shareholders in the 2024 calendar year.

On page 3, line 2, we recommend that instead of "Beginning no later than December 31, 2020, the wording should be "Beginning July 1, 2022, ...". This delay acknowledges that by the time the law is effective, the time for the annual meeting of shareholders in 2020, may have passed already, and will thus permit two shareholder meetings to elect directors or increase the number of directors.

Some corporations have terms for directors, so a reasonable delay is appropriate to account for the lack of vacancies or time to increase the number of directors.

Thank you for the opportunity to submit this testimony in support of SB 2636, SD 1, with suggested amendments. Please let us know if we can provide further information.

Neal K. Okabayashi  
(808) 524-5161

**SB-2636-SD-1**

Submitted on: 2/23/2020 5:31:14 PM

Testimony for JDC on 2/25/2020 12:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Doris Matsunaga	Testifying for Save Medicaid Hawaii	Support	No

Comments:



February 24, 2020

**LATE**

Senate's Committee on Judiciary  
Hawaii State Capitol  
415 South Beretania Street, Room 308  
Honolulu, HI 96813

Hearing: Tuesday, February 25, 2019 – 12:15 p.m.

**RE: SUPPORT for Senate Bill 2636 with Amendments to Embrace the Gender Spectrum**

Aloha Chair Rhoads, Vice Chair Keohokalole and fellow committee members,

I am writing in SUPPORT for Senate Bill 2636 with requested amendments on behalf of the LGBT Caucus of the Democratic Party of Hawai'i, Hawaii's oldest and largest policy and political LGBTQIA+ focused organization. SB 2636 requires publicly held domestic and foreign corporations to include certain numbers of females among their boards of directors. Authorizes administrative fines for noncompliance.

The LGBT Caucus supports the intent of SB 2636 but we would like to see the bill embrace gender diversity. Much like we expanded the gender markers on Hawaii State IDs and Drivers Licenses, SB 2636 should embrace this with requiring corporations to include the gender spectrum on their board of directors.

Women and those that do not adhere to the gender binary are sorely under represented on boards of directors all across this country.

We know that by having board of directors embrace the gender spectrum it will help get society at large to embrace it as well.

Mahalo nui loa for your time and consideration,

Michael Golojuch, Jr.  
Chair

**SB-2636-SD-1**

Submitted on: 2/22/2020 1:05:33 PM

Testimony for JDC on 2/25/2020 12:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Golojuch, Sr.	Individual	Support	No

Comments:

I support SB2636. Please pass. Thank you.

Mike Golojuch, Sr.

Secretary/Board Member, Rainbow Family 808

**SB-2636-SD-1**

Submitted on: 2/23/2020 7:34:45 AM

Testimony for JDC on 2/25/2020 12:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Younghi Overly	Individual	Support	No

Comments:

**SB-2636-SD-1**

Submitted on: 2/24/2020 1:33:17 AM

Testimony for JDC on 2/25/2020 12:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gerard Silva	Individual	Oppose	No

Comments:

Even my wife said this is Discrimantion!

So now you are Discrimanating against MEN.

The State needs to be Sude!!!

**SB-2636-SD-1**

Submitted on: 2/24/2020 8:45:30 AM

Testimony for JDC on 2/25/2020 12:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Matt	Individual	Oppose	No

Comments:

You cannot force equality in this way. Better to incentivise it than to punish for non-compliance.



February 25, 2020

Senator Karl Rhoads, Chair  
Senate Committee on Judiciary

**LATE**

**Re: S.B. 2636, SD1 Relating to Gender Equity**

**Hearing: February 25, 2020, 12:15 p.m.  
Conference Room 016**

Dear Chair Rhoads and Members of the Committee on Judiciary:

Hawaii Women Lawyers (“HWL”) submits testimony **supporting the intent** of S.B. 2636, SD1, Relating to Gender Equity, which would require publicly held domestic and foreign corporations to include certain numbers of females among their boards 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 for members to encourage parity within the legal profession generally, and have also focused on opportunities to serve on corporate boards.

We support the intent of this bill which highlights that we still have a long way to go to achieve gender equity on corporate boards, and that as a community, we should aim to provide women with equal opportunities to serve in leadership positions. There are many talented and capable women in our community who are ready and able to serve in these positions.

We recognize that there may be challenges with imposing a mandate to achieve this goal, and note that we would also support exploring other ways to achieve greater gender parity on corporate boards.

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



**LATE**

**SB-2636-SD-1**

Submitted on: 2/25/2020 11:05:21 AM

Testimony for JDC on 2/25/2020 12:15:00 PM

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

Comments: