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TO THE SENATE COMMITTEE ON  
ECONOMIC DEVELOPMENT AND TECHNOLOGY

THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009

Friday, March 20, 2009  
1:15 pm  
Conference Room 016

**TESTIMONY ON HOUSE BILL NO. 1503, H.D. 1  
RELATING TO LIMITED LIABILITY COMPANIES**

TO THE HONORABLE CAROL FUKUNAGA, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Tung Chan, head of the Business Registration Division ("Division"), Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to testify on House Bill No. 1503, H.D. 1, relating to limited liability companies. The Department opposes this measure and respectfully requests that the Committee hold the bill.

This bill proposes to establish a special class of limited liability companies ("LLCs") called "public purpose companies"<sup>1</sup>, which "shall use the right to exclude conferred by any and all patents in which it has an interest" for specific public purposes enumerated in the bill. We oppose this measure for the following reasons:

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<sup>1</sup> The original draft of the bill used the term "ingenuity company."

1. Hawaii's LLC Act was based on uniform laws that were thoroughly vetted by professional business registration law organizations such as the International Association of Commercial Administrators ("IACA") and the National Conference of Commissioners on Uniform State Laws ("NCCUSL"), which study business law trends on a national level. One of the Department's main goals is to maintain uniformity with other states' laws to minimize instances of legal ambiguity, which is detrimental to a healthy business climate. IACA and NCCUSL have not made recommendations to adopt a new class of LLCs like the public purpose company. The proposed designation increases inconsistencies with other business registries around the country.

2. The bill does not confer any additional rights upon public purpose companies beyond those already available for companies under the existing LLC laws. Although there is actually no legal need for this new designation, the redundancy would inevitably create questions on how public purpose companies differ from the "regular" variety of LLCs, resulting in ambiguity in our own laws.

3. The text and notes on the bill raise a number of other concerns. It is unclear whether the bill intends to make "public purpose company" a state instrumentality. To create a body corporate like the Hawaii Community Development Authority or the High Technology Development Corporation, specific language granting such status is required and such language is missing here. But at the same time, the bill's preamble and the name "public purpose company" appear to imbue public purpose companies with governmental authority. In addition, if, as the House Committee Report No. 604 indicates, "[t]his bill reflects growing efforts in other jurisdictions to make the

public good a recognizable goal under our business laws," then are these LLCs actually nonprofits? If so, they should be subject to oversight by the Attorney General's Office under Act 174, SLH 2008 in all the same circumstances where other nonprofits are. The establishment of public purpose companies may have the unintended affect of creating ambiguities with respect to the application of Act 174 and present opportunities for circumvention of its requirements.

4. This measure would result in added administrative costs to develop modifications to our IT and processing systems to recognize public purpose companies as a separate and distinct legal entity, apart from other LLCs, and to accommodate the unusual annual filing statement that is beyond the type of filings the Director accepts for any other entities. The costs are a concern as the bill does not provide for funding. The cost would negatively impact the Department and no provision has been made for it in the Biennium Budget. Recently, we have determined that the cost to add a new designation starts at approximately \$130,000 and to add a new annual filing field is approximately \$78,000.

5. This bill would also result in increased staff requirements and training expense. The bill states in proposed HRS section 428-\_\_(c) that each LLC that engages in the required activities as set forth in the bill "shall be designated a public purpose company." It anticipates that the Director makes a finding or somehow certifies that the company is engaged in the requisite activity before conferring the designation.

This is a problem because, insofar as business registration, the Department's functions are purely ministerial: we do not investigate businesses, nor do we determine

whether a business is engaged in any specific activity. To require the Director to make a substantive review for this designation takes the Department out of its ministerial role. The Department would have to hire staff and incur unbudgeted expenses.

6. The bill also raises technical concerns. The bill is silent as to whether the company can engage in activity other than the designated ones, and if so, to what extent. The designation is "irrevocable." If the designation is "irrevocable," and the public purpose company (designated as such) does not continue the requisite activity, then what becomes of the entity? Should it be administratively terminated by the Department? The bill is silent with respect to the consequences of not complying with its provisions.

In conclusion, this bill offers no activities that LLCs cannot already do while simultaneously creating legal ambiguities, uniform law issues, unanticipated budgetary expenses and other implementation problems. For these reasons, we ask that this bill be held.

Thank you for the opportunity to testify. I will be happy to answer any questions the Committee may have.



March 17, 2009

Senator Carol Fukunaga, Chair  
Committee on Economic Development and Technology  
The Senate  
State of Hawaii

Re: H.B. 1503, H.D. 1 Relating to Limited Liability Companies - Testimony in Opposition

Dear Chair Fukunaga, Vice Chair Baker and Members of the Committee on Economic Development and Technology:

I am an attorney who has practiced organizational law for about 30 years. I have been involved in the drafting of our business organizations laws numerous times during this period.

I am opposed to H.B. 1503 because it attempts to insert into the Hawaii Uniform Limited Liability Company Act provisions of very limited and specialized applicability which attempt to promote certain social goals. The Hawaii Limited Liability Act is supposed to govern all limited liability companies generally and should not be used as a vehicle to promote specific social objectives.

In addition, the objectives of H.B. 1503 can be accomplished without creating another statute and more administrative duties for state government. Any company (whether a corporation, limited liability company or otherwise) can designate itself as having specific purposes that cannot be changed. Furthermore, if that company is an entity or trust organized for public or social goal purposes, it will be under the regulation of the attorney general of the State of Hawaii under current law. No new responsibilities need to be given to the Department of Commerce and Consumer Affairs to organize a company that has certain social goals and responsibilities.

Thank you,

A handwritten signature in black ink, appearing to read 'Ronald R. Sakamoto', is written over a horizontal line.

Ronald R. Sakamoto

**Testimony in support of House Bill 1503**  
Relating to Limited Liability Companies

Senator Carol Fukunaga, Chair  
Senator Rosalyn H. Baker, Vice Chair  
Committee on Economic Development & Technology

Hearing Date:  
Friday, March 20, 2009  
1:15 PM in Room 016

Aloha Chair Fukunaga, Vice-Chair Baker and members of the Committee,

My name is Ian Chan Hodges and I have appeared before the legislature in previous sessions to provide testimony in support of creating an entity that would enable Hawaii to champion and support the rights of inventors as well as utilize patents for the public good. You also received testimony from prominent inventors and top labor leaders from around the nation in support of those bills. These proposed entities were designed to protect and utilize the patents of inventors with the understanding that patents can provide a very powerful tool for creating and retaining good jobs in communities impacted by the stresses of the global economy.

In past years the legislature passed a bill chartering the Ingenuity Corporation twice, only to have the bill vetoed by the Governor. I want to thank you for your previous support and I ask you now to pass HB 1503, which has been drafted to address the concerns of the Governor.

Last month I was in Washinton, DC where support for creating a public purpose charter with a focus on patents remains strong and the opportunities for such an entity are growing. For example, 25% of all green tech patents are assigned to entities in the state of Michigan. This month a series of meetings are taking place in Detroit where utilization of Hawaii's public purpose IP LLC statute — should it pass — are under serious consideration.

Thank you for the opportunity to submit testimony.