

STAND. COM. REP. NO.

794

Honolulu, Hawaii

MAR 04 2011

RE: S.B. No. 298

S.D. 3

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred S.B. No. 298, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO BUSINESS REGULATION,"

begs leave to report as follows:

The purpose and intent of this measure is to establish an organizational and regulatory framework for sustainable business corporations.

Your Committee received testimony in support of this measure from Hawaii Angels, Kuleana Green Business Program of the Kona-Kohala Chamber of Commerce, American Sustainable Business Council, GreenCar Hawaii, The Chamber of Commerce of Hawaii, HonuGuide, and seven private individuals. Your Committee received testimony in opposition to this measure from the Commissioner of Securities of the Business Registration Division of the Department of Commerce and Consumer Affairs. Your Committee received comments on this measure from The Hogan Entrepreneurs of Chaminade University and two private individuals.

Your Committee finds that under general principles of corporate organization, the directors of a corporation have an enforceable duty to maximize shareholder profit. Your Committee further finds that this duty may prevent entrepreneurs and investors from achieving their own goals of establishing and investing in private enterprises that exist to serve social or environmental purposes in addition to pursuing profits. Your Committee notes that several other states have responded to market



demand for a voluntary corporate designation that allows enterprises to pursue good corporate citizenship by authorizing the formation of corporate entities that may be governed according to principles other than pure profit motive.

Your Committee notes the objections raised in the testimony of the Securities Commissioner to certain provisions of this measure as it was received by your Committee. Your Committee notes that the Securities Commissioner expressed reservations about the impact of this measure on the registry of the Business Registration Division, the elimination of directors' and officers' fiduciary duties, and ambiguity in the shareholders' right to enforce corporate fiscal responsibility by this measure's substitution of an undefined benefit enforcement procedure for the normal shareholder and director right of action with respect to enforcing a director's fiduciary duty.

Accordingly, your Committee has amended this measure by:

- (1) Deleting provisions pertaining to benefit enforcement proceedings;
- (2) Inserting definitions of "material owner" and "material relationship" to clarify the meaning of those terms as used within this measure;
- (3) Clarifying the process for designating a corporation as a sustainable business corporation in a manner that does not disrupt the existing business registry of the Business Registration Division;
- (4) Clarifying the mandatory and discretionary components of the standard of conduct, the fiduciary duty, and personal liability of the directors and officers of a sustainable business corporation;
- (5) Deleting provisions granting immunity from personal liability to the benefit director or third parties who perform the duties of the board of directors and officers;
- (6) Clarifying that the shareholders and directors of a sustainable business corporation shall have the same right of action as the shareholders and directors of any domestic corporation plus an additional right of action



to enforce the general and specific public benefit purpose of the sustainable benefit corporation;

- (7) Clarifying the requirements for the third party standard that shall be used to define, report, and assess overall corporate social and environmental performance of a sustainable business corporation;
- (8) Clarifying that the duties of the Business Registration Division in regard to filings made by a sustainable business corporation shall be ministerial only, consistent with the duties of the Business Registration Division in regard to filings made by any other domestic corporation;
- (9) Removing provisions relating to the State's representation regarding the accuracy of a sustainable benefit corporation's annual filings;
- (10) Inserting an effective date of July 1, 2050, to allow for further discussion; and
- (11) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 298, S.D. 2, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 298, S.D. 3.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB298, SD2	Committee Referral: CPN, JDL	Date: 3/3/11
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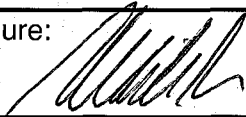
The committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312 Pass, with amendments 2311 Hold 2310 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam			✓	
TOTAL	4	0	1	0

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature: 

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*Only one measure per Record of Votes