



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

S.B. NO. 1349, S.D. 1, RELATING TO NONPROFIT CORPORATIONS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, March 31, 2011 TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Kristie Cruz Chang, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Attorney General supports this bill. The Attorney General provides regulatory oversight of nonprofit corporations that are "public benefit corporations" (nonprofit corporations that are operated for charitable, religious, or educational purposes) under chapter 414D, Hawaii Revised Statutes.

The purpose of this bill is to allow membership based nonprofit corporations to conduct annual elections using electronic means, such as the Internet, if permitted by their bylaws and articles of incorporation. Many large Hawaii membership nonprofit corporations are already using reliable Internet based election systems to conduct elections efficiently, reliably and more inexpensively than using the United States Mail. Although existing provisions of chapter 414D, Hawaii Revised Statutes, appear to permit the use of electronic submission of ballots, that law could benefit from better clarity.

This bill also proposes to allow nonprofit corporations to provide notices of meetings to directors electronically, if the director consents to such form of notice. This change will

also bring the law into conformity with practices that are actually being used by many nonprofit corporations.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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KEALI'I S. LOPEZ
DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

TO THE HOUSE JUDICIARY COMMITTEE
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

Date: Thursday, March 31, 2011
Time: 2:00 p.m.
Conference Room: 325

**TESTIMONY ON SENATE BILL NO. 1349, SD1
RELATING TO NONPROFIT CORPORATIONS**

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN & THE HONORABLE KARL RHOADS,
CHAIRS AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to testify. My name is Tung Chan, Commissioner of Securities for the Business Registration Division (BREG), Department of Commerce and Consumer Affairs ("Department"). The Department supports this bill.

This bill proposes to amend the Hawaii Nonprofit Corporation Act, chapter 414D, Hawaii Revised Statutes, by expressly permitting voting by ballot and through electronic means, allowing directors to receive notice of meetings by electronic transmission, and facilitating meetings through electronic technology. These amendments will provide clarity and flexibility to nonprofit corporations in using technology that is readily accessible to its leadership and members. This bill will encourage greater participation in governance by members while reducing administrative costs. We respectfully ask that this bill be passed. Thank you for the opportunity to testify.



House Committee on Judiciary
Thursday, March 31, 2011
2:00 p.m.

SB 1349, SD 1, Relating to Nonprofit Corporations.

Dear Chairperson Keith-Agaran and Committee Members:

The University of Hawai'i Professional Assembly ("UHPA") strongly supports SB 1349, SD 1 which would amend Hawaii's Nonprofit Corporation Act (HRS Chapter 414D, the "Act"). Use of various means of electronic transmission, primarily electronic mail and facsimile transmission, are common and widespread in today's society. These methods of communication are efficient and cost-effective. Jurisdictions such as California have amended their nonprofit corporation law to permit the use of electronic transmission for notice, voting, and related matters. Hawaii followed suit in 2009 by adding provisions to the Act permitting use of email for membership meeting notices, but our law is still unclear on using electronic voting systems or ballots for members, participation in member meetings via remote or electronic communication methods, and use of email for director meeting notices.

SB 1349, SD 1 would amend Hawaii's Nonprofit Corporation Act to clarify that (i) membership action may be taken by ballots which may be transmitted by mail or electronic transmission, (ii) members may participate in membership meetings not only in person, but via teleconference, the internet, or similar electronic means, and (iii) notice of director meetings may be provided by email to those directors who consent to receive such notices by email.

Membership voting and participation with the use of written ballots is common practice for many membership organizations in other jurisdictions and is contemplated by the Revised Model Nonprofit Corporation Act (2nd ed.) upon which Hawaii's Act is based, the new RMNCA 3rd edition adopted August 2008, and nonprofit corporation acts in various other jurisdictions. Unfortunately, this provision, codified previously as HRS Section 414D-108, was repealed by Act 130 of the 2002 Hawaii Legislature. Interestingly, however, written ballots may currently be used in the election of directors under HRS Section 414D-115(b), a provision added in 2003. The use of written ballots, including those in electronic form, would permit nonprofit organizations with many members to maximize membership participation without resorting to complicated and confusing proxy voting procedures. This measure would once again permit members to express their votes on all matters using a ballot which could be transmitted by mail, by electronic transmission, or similar electronic means. The benefits are lower costs to membership nonprofits and increased member participation and greater transparency in corporate governance.

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In addition to authoring membership action to be taken by ballot, the Bill also adds a provision to the Act to permit members of a nonprofit corporation to attend membership meetings not only in person, but by use of the internet, teleconference, or similar means of modern electronic technology. This feature is similar to the provisions in Hawaii's for-profit law, yet still requires nonprofits to have a physical meeting location for those members who wish to attend in person.

Finally, the Bill permits nonprofit corporations to utilize email to provide notice of director meetings. However, email could be used for those directors who consent to the use of email for such notices consistent with society's widespread use of the internet and similar means of electronic communications.

UHPA has discussed the provisions of this measure with representatives of the State Department of Commerce and Consumer Affairs, the Attorney General's Office, Tax Division and others in the course of proposing these changes and they are supportive of these changes. We respectfully request the Committee pass the Bill out.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kristeen Hanselman". The signature is fluid and cursive, with the first name being more prominent.

Kristeen Hanselman
Associate Executive Director



**ALOHA
SOCIETY OF
ASSOCIATION
EXECUTIVES**

ALOHA SOCIETY OF ASSOCIATION EXECUTIVES
ASAE-Hawaii
P.O. Box 282
Honolulu, Hawaii 96809-0282

March 31, 2011

Testimony To: House Committee on Judiciary
Representative Gilbert S.C. Keith-Agaran, Chair

Presented By: Tim Lyons, Legislative Chairman
Aloha Society of Association Executives

Subject: S.B. 1349, SD 1 – RELATING TO NONPROFIT CORPORATIONS.

Chair Keith-Agaran and Members of the Committee:

I am Tim Lyons, Legislative Chairman for the Aloha Society of Association Executives, an association composed of most of the Executive Directors of non-profit business associations from throughout the state. We support this bill.

This bill provides for an updating to today's reality and the use of electronic means for voting. Many non-profit organizations have already begun to implement this, at least on a committee level and as their By-laws and Articles of Incorporation allow them to do so. Others have passed new policies by the Board of Directors and adopted by the membership that allow this as well. In this day of high expense of neighbor island travel and in the busy lives of many people who serve on the Boards of Directors of non-profit corporations, we feel that this change is essential and actually brings the law into reality to what is actually happening.

Based on the above, we support this bill and recommend its passage.

Thank you.

Aloha Society of Association Executives – Hawaii Chapter **Membership List**

AlohaCare
Building Industry Association of Hawaii
General Contractors Association of Hawaii
Hawaii Association of Independent Schools
Hawaii Association of Realtors
Hawaii Bankers Association
Hawaii Convention Center
Hawaii Credit Union League
Hawaii Food Industry Association
Hawaii Insurers Council
Hawaii Museums Association
Hawaii Optometric Association, Inc.
Hawaii Orthopedic Association
Hawaii Pacific Tennis Foundation
Hawaii Society of Certified Public Accountants
Hawaii Transportation Association
Hawaii Visitors & Convention Bureau
Hawaii Wall & Ceiling Industry Association
Honolulu Board of Realtors
Kaua'i Visitors Bureau
Legislative Information Services of Hawaii
Mid-Pacific Country Club
National Association of Insurance & Financial Advisors Hawaii
Organizations Management, LLC
Pacific Telecommunications Council
Painting & Decorating Contractors Association
Plumbing & Mechanical Contractors Association
Presentation Resources
PROcom Hawaii
Retail Merchants of Hawaii
Sand Island Business Association
Sheet Metal Contractors Association
SMEI Honolulu
Hawaii Association of Broadcasters
The Legislative Center, Inc.
Waikiki Improvement Association



Thursday, March 31, 2011
2:00 PM
Conference Room 325

TESTIMONY TO
THE HOUSE COMMITTEE ON JUDICIARY

RE: SB 1349, SD 1 – Relating to Nonprofit Corporations

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee,

My name is Robert Witt, executive director of the Hawaii Association of Independent Schools (HAIS), which represents 99 private and independent schools in Hawaii and educates over 33,000 students statewide.

We support SB 1349, SD 1, which would amend the Hawaii Nonprofit Corporations Act to allow member actions by ballot and electronic voting, use of electronic notice, and conduct of meeting by teleconference.

Last session our association testified on behalf of a similar measure, which became Act 63 (SLH 2010), allowing the Early Learning Council to conduct meetings by teleconference. Our belief at that time, and now, is that in an era of decreasing revenues along with an aspiration for more cost-effective community participation in urgently needed non-profit work, the added flexibility provided by this measure is a much needed 21st century strategy that will have benefits for many.

We support extending the use of technology for voting, notices, and meetings to all Hawaii nonprofit corporations.

Thank you for the opportunity to testify.



March 31, 2011

Chair Gilbert Keith-Agaran
House Committee on Judiciary
Hawaii State House of Representatives
State Capitol, Room 325
Honolulu, HI 96813

RE: SB 1349, SD 1, Relating to Nonprofit Corporations

Dear Chair Keith-Agaran and members of the House Judiciary Committee:

The Hawai'i Alliance of Nonprofit Organizations is a statewide, sector-wide professional association for nonprofits. HANO member nonprofits provide essential services to every community in the state. Our mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i.

We support SB 1349, SD 1, which amends the Hawaii Nonprofit Corporations Act to permit member actions by ballot and electronic voting, use of electronic notice, and conduct of meeting by teleconference. The amendments propose modern 21st century communication technologies that allow for more cost-effective, meaningful and timely participation by nonprofit corporation members in their organizations. These amendments will allow for clearer communication within our statewide organizations and help members who are spread across the major islands.

We applaud these types of actions by the Legislature which work to streamline and improve systems and allow cost-savings for Hawaii's nonprofit sector at a time when budgets are thin.

Thank you for the opportunity to provide testimony.

Lisa T. Maruyama
President and CEO