



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 791, RELATING TO NONPROFIT CORPORATIONS.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Wednesday, January 30, 2013 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Hugh R. Jones, Supervising Deputy, Tax & Charities Division

Chair McKelvey and Members of the Committee:

The Attorney General supports the passage of this bill, the purpose of which is to amend chapter 414D, Hawaii Revised Statutes (HRS), to clearly provide that directors of a nonprofit corporation shall have access to the books and records of the corporation to the extent reasonably related to their duties.

At common law, directors of corporations have an absolute right of access to corporate records. See In re Bush Terminal Co., 78 F.2d 662 (2d Cir. 1935); Vol. 5A Fletcher Cyclopedia, The Law of Corporations § 2235 (“The directors, as trustees for the shareholders, are entitled to full and complete information as to the corporation’s affairs”). Sections 414D-301 through 414D-304, HRS, create a judicially enforceable right for members of membership-based nonprofit corporations to inspect the books and records of the corporation, but no comparable provision assures that a director shall have reasonable access. It is axiomatic that a director must be informed and have access to basic financial and operational data to comply with the duty of care imposed by section 414D-149, HRS. Indeed, section 414D-149(b) provides that a director may rely on information, opinions, reports, statements, and financial data prepared by the corporation.

The Attorney General presently has an ongoing investigation of a publicly funded nonprofit corporation, the Wailuku Main Street Association, Inc., which denied the chairperson of the board access to financial and operational records and information. The Attorney General

subpoenaed records of the corporation and testimony of the Executive Director and discovered widespread mismanagement and inaccurate financial reporting to the Internal Revenue Service.

Adopting a provision that ensures that directors have access to corporate records for proper purposes will help ensure meaningful “self regulation” by directors of the corporation and allow them to adhere to their statutory duty of care. This bill is modeled upon a section of The Model Nonprofit Corporation Act adopted by the American Bar Association.

The Attorney General requests the favorable consideration of this bill by the Committee.



January 28, 2013

Chair Angus McKelvey
House Committee on Consumer Protection and Commerce
Hawaii State House of Representatives
State Capitol, Room 325
Honolulu, HI 96813

RE: HB 791, Relating to Nonprofit Corporations

Dear Chair McKelvey and members of the House Consumer Protection and Commerce 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.

HANO supports HB 791, which adds a new section to the Nonprofit Corporations Act that gives board members of nonprofit corporations the ability to request copies of financial records if the purpose is reasonably related to the performance of the director of the corporation and as long as it does not violate any duty to the corporation or law.

We support the basic tenets of transparency and information sharing to support best practices in nonprofit management. Thank you for the opportunity to provide testimony.

Mahalo,

Lisa T. Maruyama
President and CEO

January 28, 2013

Committee on Consumer Protection & Commerce

RE: HB791

Hearing Date: January 30, 2013

To Whom it May Concern:

The Maui NonProfit Directors Association is in full support of HB 791 as it is presented. Our members are executive directors, CEOs, and chief professional officers, of their respective nonprofit corporations. For most of us, the idea that any information related to the workings of the agency might be withheld from our board members is virtually foreign. In fact for most of us, we encourage our board members to become more involved in the organization because only by having access to the books and records of the organization are they better able to make smart decisions with regard to the success of the organization and its mission.

The Maui NonProfit Directors Association (MNPD) is made up of the top local paid executives/managers of over 60 agencies based on Maui. MNPD as an organization is 25 years old and is a great asset to the community, serving as a primary mentor to those who are new to the nonprofit world on Maui and a sounding board for well established leaders. MNPD membership runs from the very small nonprofit Keiki Kokua to our largest non-profit employer, Hale Makua.

Should you have any questions you would like to ask us, please don't hesitate to give me a call at 808-242-5761 or email me at susie@lokahipacific.org. You may also want to check out our MNPD website at mauinonprofit.org

Yours truly,

Susie Thieman,
President of
Maui NonProfit Directors Association