

HB 791, HD1

Measure Title: RELATING TO NONPROFIT CORPORATIONS.
Report Title: Nonprofit Corporations; Inspection of Records by Directors
Description: Entitles directors of nonprofit corporations to inspect and copy the books, records, and documents of their nonprofit corporation to the extent reasonably related to their duties as directors at any reasonable time. (HB791 HD1)
Companion: SB1021
Package: Gov
Current Referral: CPN, JDL
Introducer(s): SOUKI (Introduced by request of another party)



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

ON THE FOLLOWING MEASURE:

H.B. NO. 791, H.D. 1, RELATING TO NONPROFIT CORPORATIONS.

BEFORE THE:

SENATE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Thursday, March 14, 2013 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): David M. Louie, Attorney General, or
Hugh R. Jones, Deputy Attorney General

Chair Baker and Members of the Committee:

The Attorney General supports the passage of this bill, with the amendments described below, 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 respectfully requests that the Committee make clarifying amendment to the bill on page 1, line 6, to add the phrase, “, including the records described in section 414D-301,” after the word “corporation.” Section 414D-301, HRS, refers to the records a corporation must maintain and make available for inspection by its members (if it has members). This requested amendment makes clear that directors are entitled to inspect and copy those records that a corporation must by law maintain.

The Attorney General requests the favorable consideration of this bill by the Committee, with the clarifying amendment noted above.

Steve Glanstein
P. O. Box 29213
Honolulu, HI 96820-1613

March 13, 2013

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Brickwood Galuteria, Vice Chair
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 229
415 South Beretania Street
Honolulu, HI 96813

**RE: Testimony in SUPPORT OF HB791 HD1;
Hearing Date: March 14, 2013 9:30 a.m.; sent via Internet only.**

Aloha Chair Baker, Vice-Chair Galuteria, and Committee members,

Thank you for the opportunity to present testimony on HB791 HD1.

I recommend that HB791 HD1 be approved.

The bill proposes to entitle directors of nonprofit corporations to inspect and copy the books, records, and documents of their nonprofit corporation to the extent reasonably related to their duties as directors at any reasonable time.

I have some personal experience with this issue. I've served on several non-profit boards in my 30 years of parliamentary practice.

A simple, yet expensive example is provided. A non-profit board delayed the disclosure of financial information regarding reimbursements to an executive director. This delay significantly increased the amount she was able to embezzle from the corporation and delayed the discovery of her criminal acts.

Non-profit corporations enjoy a special status. They enjoy a tax-exempt status and are supposed to provide a public benefit. This status comes with additional responsibility, enforced through our laws.

This bill may be painful for non-profits that delegate large amounts of power to their officers or executive director. However, I believe that it is critical for directors to have the information necessary to discharge their fiduciary duty. This bill will promote that obligation.

Thank you for the opportunity to present testimony in SUPPORT of this bill.

Sincerely,

Steve Glanstein

Digitally signed by Steve Glanstein
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Date: 2013.03.13 03:18:21 -10'00'

Steve Glanstein
Professional Registered Parliamentarian
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