



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, March 27, 2013 **TIME:** 10:50 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Jodi K. Yi, Deputy Attorney General

Chair Hee and Members of the Committee:

The Attorney General supports the passage of this bill in the form of Senate Draft 1, 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,



**Senate Committee on Judiciary & Labor
Wednesday, March 27, 2013 at 10:50 a.m.
Conference Room 016**

Chair Clayton Hee
Chair, Committee on Judiciary & Labor
Hawaii State Senate
Honolulu, HI 96813

RE: HB791 HD1 SD1 - Relating to Nonprofit Corporations

Dear Chair Hee and members of the Senate Judiciary & Labor 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 HB791 HD1 SD1, which adds a new section to HRS 414D, the Nonprofit Corporations Act, that gives expressly board directors 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 recognize there are provisions in common law that already give directors of corporations the right to access corporation financial records, but it is not specified in Hawaii's nonprofit law. While the existing HRS 414D, Section 302 gives nonprofit corporation members access to records, nothing references the specific rights of directors to access records, although we might assume that all directors are members of the corporation in most cases. Never the less, we understand this bill's intent is to specify the right of directors of nonprofit corporations to access records.

Ultimately, we support the basic tenets of transparency and information sharing to support best practices in nonprofit management and governance and thus support this clarification. Thank you for the opportunity to provide written testimony.

Mahalo,

Lisa T. Maruyama
President and CEO

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

March 25, 2013

Honorable Senator Clayton Hee, Chair
Honorable Senator Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol, Conference Room 016
415 South Beretania Street
Honolulu, HI 96813

**RE: Testimony in SUPPORT OF HB791 HD1SD1;
Hearing Date: March 27, 2013 10:50 a.m.; sent via Internet only.**

Aloha Chair Hee, Vice-Chair Shimabukuro, and Committee members,

Thank you for the opportunity to present testimony on HB791 HD1SD1.

I recommend that HB791 HD1SD1 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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Location: Honolulu, HI
Date: 2013.03.25 15:33:42 -10'00'

Steve Glanstein
Professional Registered Parliamentarian

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