



**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 JUDICIARY

DATE: Friday, February 15, 2013

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Rhoads 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.



**ALOHA
SOCIETY OF
ASSOCIATION
EXECUTIVES**

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

February 8, 2013

Testimony To: House Committee on Judiciary
Representative Karl Rhoads, Chair

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

Subject: H.B. 791 – RELATING TO NONPROFIT CORPORATIONS.

Chair Rhoads and Members of the Committee:

I am Tim Lyons, Legislative Chairman for the Aloha Society of Association Executives, a statewide Association composed of most of the major non-profit corporations in the state that have paid Association directors.

We support this bill.

We find that non-profit organizations have a special status under the tax law and part of that special status should extend a duty of transparency in their operations. Under the Internal Revenue Code, the Directors and Officers of non-profit corporations have a fiduciary responsibility to be sure that the corporation is run appropriately and in fact, need to have knowledge of the corporation's tax return, should any questions arise during that tax return or should there be any question on the other day to

day activities. We do not find it an unreasonable request to allow the directors to have access to books and records.

Based on the above then, we support this bill.

Thank you.

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 13, 2013 10:13 PM
To: JUDtestimony
Cc: Steveghi@Gmail.com
Subject: Submitted testimony for HB791 on Feb 15, 2013 14:00PM

HB791

Submitted on: 2/13/2013

Testimony for JUD on Feb 15, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Glanstein	Individual	Comments Only	No

Comments: SUPPORT: Comments: First-hand experience has been frustrating when an executive director of a non-profit and a president refuses to make information available for directors to do their job. This bill is long overdue. Examples from actual situations include simple items like a copy of the D&O insurance certificate, various management contracts, accounting transactions to the treasurer, etc.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov