

SB 1021

Measure Title: RELATING TO NONPROFIT CORPORATIONS.
Report Title: Nonprofit Corporations; Inspection of Records by Directors
Description: Adds a new section 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.
Companion: HB791
Package: Gov
Current Referral: CPN, JDL
Introducer(s): KIM (Introduced by request of another party)

<u>Sort by</u> <u>Date</u>		Status Text
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/24/2013	S	Referred to CPN, JDL.
1/29/2013	S	The committee(s) on CPN has scheduled a public hearing on 02-08-13 9:00AM in conference room 229.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1021, RELATING TO NONPROFIT CORPORATIONS.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Friday, February 8, 2013

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 229

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

Chair Baker and Members of the Committee:

This bill is the Senate companion bill to H.B. No. 791 that was passed out of the House Committee on Consumer Protection & Commerce on February 4, 2013. 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.



February 7, 2013

Chair Roslyn Baker
Senate Committee on Commerce and Consumer Protection
State Capitol, Conference Room 229
Honolulu, HI 96813

RE: SB 1021 Relating to Nonprofit Corporations

Dear Chair Baker and members of the Senate Commerce and Consumer Protection 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 SB 1021, 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. Legal precedent has regarded only for-profit corporations. While we can assume that common law also extends to nonprofit corporations, this is not specified. In addition, 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 confirm 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 to HRS. Thank you for the opportunity to provide written testimony.

Mahalo,

Lisa T. Maruyama
President and CEO



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

February 8, 2013

Testimony To: Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair

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

Subject: S.B. 1021 – RELATING TO NONPROFIT CORPORATIONS.

Chair Baker 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.