

S.B. NO. 1021

JAN 24 2013

A BILL FOR AN ACT

RELATING TO NONPROFIT CORPORATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 414D, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§414D- Inspection of records by directors. (a) A
5 director of a nonprofit corporation is entitled to inspect and
6 copy the books, records, and documents of the corporation at any
7 reasonable time to the extent reasonably related to the
8 performance of the director's duties as a director, including
9 duties as a member of a committee, but not for any other purpose
10 or in any manner that would violate any duty to the corporation
11 or law other than this chapter.

12 (b) The circuit court of the county where the nonprofit
13 corporation's principal office (or if none in this State, its
14 registered office) is located may order inspection and copying
15 of the books, records, and documents at the corporation's
16 expense, upon application of a director who has been refused
17 such inspection rights, unless the corporation establishes that
18 the director is not entitled to such inspection rights. The

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1 court shall dispose of an application under this subsection on
2 an expedited basis.


3 (c) If an order is issued, the court may include
4 provisions protecting the nonprofit corporation from undue
5 burden or expense, and prohibiting the director from using
6 information obtained upon exercise of the inspection rights in a
7 manner that would violate a duty to the corporation, and may
8 also order the corporation to reimburse the director for the
9 director's costs (including reasonable attorney's fees) incurred
10 in connection with the application."

11 SECTION 2. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

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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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO NONPROFIT CORPORATIONS.

PURPOSE: The purposes of this to amend chapter 414D, Hawaii Revised Statutes, 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.

MEANS: Add a new section to chapter 414D, Hawaii Revised Statutes.

JUSTIFICATION: 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, Hawaii Revised Statutes, 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 their duty of care imposed by section 414D-149. Indeed, section 414D-149(b), Hawaii Revised Statutes, provides that a director may rely on information, opinions, reports, statements, and financial data prepared by the corporation.

Impact on the public: This bill will allow directors of nonprofit corporations to have a statutorily guaranteed right of access when reasonably related to their duties as a director.

Impact on the department and other agencies:
None.

GENERAL FUND: None.
OTHER FUNDS: None.
PPBS PROGRAM DESIGNATION: ATG 100
OTHER AFFECTED AGENCIES: None.
EFFECTIVE DATE: Upon approval.