



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2747, S.D. 1, RELATING TO NONPROFIT CORPORATIONS.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Wednesday, February 28, 2018      **TIME:** 10:45 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):**      **WRITTEN TESTIMONY ONLY.**

(for more information, contact Kathryn-Jean T. Kanemori,  
Deputy Attorney General, at 586-1480.)

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Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General supports this bill.

The main purposes of this bill are to (1) clarify that public benefit corporations may not purchase its memberships, (2) clarify that a person who does not have authority to vote as a member of the board is not a director, and (3) make other housekeeping amendments. If enacted, the bill would be effective upon approval.

Purchase of Memberships

Public benefit corporations are normally prohibited from making any distributions other than for charitable purposes under section 414D-19, Hawaii Revised Statutes (HRS). Unlike shareholders of a corporation or partners of a partnership, members of a public benefit corporation do not have an economic ownership interest in the public benefit corporation. Therefore, a public benefit corporation's use of its charitable assets to purchase its memberships would amount to a distribution to its members and would evade the rule against distributing charitable assets for non-charitable purposes.

If passed, this bill will explicitly prohibit public benefit corporations from purchasing its memberships, prevent charitable assets from being used for non-charitable purposes, and conform the Hawaii Nonprofit Corporations Act to the Revised Model Nonprofit Corporation Act (1987).

### Directors Must Have Authority to Vote

Based on the numerous inquiries received by our department, there appears to be confusion as to whether ex-officio directors, or individuals named as directors based on their position or status, who do not have any authority to vote as a member of the board are in fact directors of a nonprofit corporation for purposes of chapter 414D, HRS. Non-voting directors would be unable to perform their fiduciary duties as a director if they are unable to vote to take any action.

This bill clarifies that the term “directors” as used in the Hawaii Nonprofit Corporations Act only includes those who have the authority to vote as a member of the board.

### Housekeeping Amendments

This bill also makes other housekeeping amendments, consistent with the Revised Model Nonprofit Corporation Act (1987) and other sections of the Hawaii Nonprofit Corporations Act, to clarify that a corporation with members may designate its directors, add words that had been inadvertently removed through Act 87, Session Laws of Hawaii 2017, and allow the Attorney General more time to conduct a review of a proposed sale of substantially all of the assets of a public benefit corporation other than in the regular course of its activities.

We respectfully request that the Committee pass this bill.