

Honolulu, Hawaii

FEB 15 2019

RE: S.B. No. 1171
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 1171 entitled:

"A BILL FOR AN ACT RELATING TO NONPROFIT CORPORATIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Clarify that a public benefit corporation 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;
- (3) Clarify that a corporation with members may designate its directors;
- (4) Increase the length of time that the Attorney General has to review proposed sale of substantially all of the assets of public benefit corporations other than in the regular course of its activities; and
- (5) Makes other housekeeping amendments.

Your Committee received testimony in support of this measure from the Department of the Attorney General, University of Hawai'i Foundation, and Hawai'i Alliance of Nonprofit Organizations.



Your Committee finds that public benefit corporations are normally prohibited from making any distributions other than for charitable purposes under existing law. 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 rules against distributing charitable assets for non-charitable purposes. This measure explicitly prohibits public benefit corporations from purchasing its memberships, prevents charitable assets from being used for non-charitable purposes, and conforms the Hawaii Nonprofit Corporations Act to the Revised Model Nonprofit Corporation Act of 1987.

Your Committee additionally finds that existing law is unclear 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. Non-voting directors would be unable to perform their fiduciary duties as directors if they are unable to vote to take any action. This measure further clarifies that the term "directors" as used in the Hawaii Nonprofit Corporations Act only includes those who have authority to vote as a member of the board. This measure lastly makes additional housekeeping amendments, for consistency with existing model acts and state law.

Your Committee has amended this measure by:

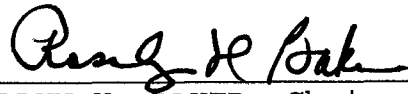
- (1) Clarifying that an electronic or digital signature shall constitute a form of written consent by a board of directors; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1171, as amended herein, and recommends that it pass Second Reading in the form attached hereto



as S.B. No. 1171, S.D. 1, and be referred to your Committee on
Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,



ROSALYN H. BAKER, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:*	Committee Referral:	Date:
SB 1171	CPH, JDC	2/11/19
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____		
The Recommendation is:		
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313		
Members	Aye	Aye (WR)
Nay	Excused	
BAKER, Rosalyn H. (C)	✓	
CHANG, Stanley (VC)	✓	
KEOHOKALOLE, Jarrett	✓	
NISHIHARA, Clarence K.	✓	
RUDERMAN, Russell E.	✓	
THIELEN, Laura H.	✓	
FEVELLA, Kurt		✓
TOTAL	6	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted		
Chair's or Designee's Signature:		
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy		

*Only one measure per Record of Votes