

# HB944 HD1

Measure Title:	RELATING TO NONPROFIT CORPORATIONS.
Report Title:	Nonprofit Corporations
Description:	Prohibits purchase of its own memberships by a public benefit corporation. Clarifies functions, duties, and composition of nonprofit boards of directors. Permits boards to take action without a meeting through electronic means. Clarifies time limits for notice to the Attorney General for oversight purposes. (HB944 HD1)
Companion:	<a href="#">SB1171</a>
Package:	Governor
Current Referral:	CPH, JDC
Introducer(s):	SAIKI (Introduced by request of another party)



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 944, H.D. 1, RELATING TO NONPROFIT CORPORATIONS.

**BEFORE THE:**

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

**DATE:** Tuesday, March 12, 2019

**TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Patrick K. Kelly, Deputy Attorney General

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Chair Baker and Members of the Committee:

The Department of the Attorney General (Department) supports this bill. This bill amends the Hawaii Nonprofit Corporations Act, chapter 414D, Hawaii Revised Statutes (HRS). We request that the bill be passed.

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. H.D. 1 added a provision to allow electronic signatures and changed the effective date to July 1, 2050, to promote further discussion.

Purchase of Memberships

Public benefit corporations are normally prohibited from making any distributions other than for charitable purposes under section 414D-19, 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 the 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 Department 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 with an effective date of upon its approval.



UNIVERSITY of HAWAII<sup>1</sup>  
FOUNDATION

**TESTIMONY OF THE UNIVERSITY OF HAWAII FOUNDATION  
ON HOUSE BILL NO. 944, H.D. 1., RELATING TO NONPROFIT ORGANIZATIONS**

**Hearing Date:** March 12, 2019  
**Committee:** Commerce, Consumer Protection and Health  
**Time:** 9:00 a.m.  
**Location:** Room 229, State Capitol  
**Testifier** Hugh R. Jones, In-House Counsel (956-6378)

Chairperson Baker, Vice Chair Chang, and Committee Members:

The University of Hawaii Foundation (“UHF”), a private, nonprofit corporation, supports the passage of this bill that would clarify provisions of Hawaii’s nonprofit corporation’s law to clarify the role of non-voting directors of nonprofit corporations. UHF, like many Hawaii nonprofits have non-voting directors, or trustees on its board of directors, and this bill would provide greater clarity on this point.

UHF also strongly supports the amendment made by House Draft 1, to clarify that a “written consent” for purposes of section 414D-144, HRS, may be signed

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electronically. The directors of many Hawaii nonprofit corporations must often take action between regularly scheduled directors' meetings, by using these "written consents" to authorize management to take certain actions. These may include employment matters, purchase and sale transactions, expenditures above certain thresholds, or that ratify actions taken by management in unanticipated circumstances, such as civil defense situations, bad weather or similar situations. The UHF, like many other for profit and nonprofit corporations uses an online "Board Portal" that allows directors and board committees to obtain their meeting notices, meeting agendas, and materials online or on smart devices. These portals also allow directors to electronically sign documents, such as a "written consent."

UHF requests the Committee's favorable consideration of this bill.

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**Testimony to the Senate Committee on Commerce, Consumer Protection and Health**  
**Senator Rosalyn Baker, Chair**  
**Senator Stanley Chang, Vice Chair**  
**Tuesday, March 11, 2019, 9:00 a.m.**  
**Conference Room 229**  
**HB 944, HD 1 - Relating to Nonprofit Corporations**

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Dear Chair Baker, Vice-Chair Chang, and members of the CPH Committee:

On behalf of the Hawai'i Alliance of Nonprofit Organizations, I would like express **support of HB 944, HD 1** relating to Nonprofit Corporations.

Hawai'i Alliance of Nonprofit Organizations (HANO) is a statewide, sector-wide professional association of nonprofits. Our mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i. Our member organizations provide essential services to every community in the state.

HANO supports the amendments being made to Chapter 414D that clarify that public benefit corporations may not purchase their memberships; to clarify that a person who is not a voting board member is not a director; that a corporation with members may designate its directors; and to add previous wording to increase the length of time the AG has to review proposed sale of substantially all of the assets of public benefit corporations other than in the regular course of its activities.

We also support the added language to Chapter 414D-144 to allow electronic or digital signature to constitute a form of "written consent" by boards of directors.

Thank you for the opportunity to submit testimony.

Mahalo,

Lisa Maruyama  
President and CEO

SECTION 1. Section 414D-144, Hawaii Revised Statutes, is amended to read as follows with proposed language underscored:

**"§414D-144 Action without meeting.** (a) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) For purposes of this section a "written consent" shall be deemed to include a consent that is executed by way of an electronic or digital signature provided that the corporation employs reasonable measures to authenticate such electronic or digital signatures. Such measures may include security measures used by board meeting portal systems that are commercially available.