



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2017**

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**ON THE FOLLOWING MEASURE:**

H.B. NO.1027, H.D. 1, RELATING TO NONPROFIT CORPORATIONS.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Friday, February 24, 2017

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Stacie M. Nakamura, Deputy Attorney General

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Chair Nishimoto and Members of the Committee:

The Department of the Attorney General supports this Administration bill. The purposes of this bill are to partially restore a previously existing section of the State's nonprofit corporation law, which allows domestic nonprofit corporations to "convert," to allow a domestic nonprofit corporation to convert to a foreign nonprofit corporation under certain circumstances, to clarify provisions concerning a director's statutory duties, and to make technical amendments to provisions regarding dissolution of certain nonprofit corporations.

**A. Conversion Provisions.**

The Attorney General proposed legislation in 2012 (H.B. No. 2458) repealing section 414D-207, Hawaii Revised Statutes (HRS), which allowed a domestic nonprofit corporation to convert to a foreign corporation "or any other business entity." The reason for repealing section 414D-207, HRS, was that, as written, the statute at the time allowed the diversion of charitable assets for use in for-profit activities in situations where a domestic nonprofit corporation could solicit and receive charitable donations intended for charitable purposes and then convert the entity to a foreign for-profit entity and use those charitable donations for the benefit of shareholders of a corporation or members of a limited liability company. H.B. No. 2458 was signed into law on April 20, 2012 as Act 37. In hindsight Act 37 went too far. When the Legislature repealed section 414D-207, HRS, it also prevented domestic nonprofit corporations from converting to foreign nonprofit corporations.

This bill, if passed, will restore a portion of repealed section 414D-207, HRS, by: (a) authorizing domestic nonprofit corporations to convert to foreign nonprofit corporations; (b) creating a procedure regarding conversion; and (c) enacting provisions regarding the legal effect of a conversion.

#### Procedure

A domestic nonprofit corporation may convert into a foreign nonprofit corporation if: (a) the board of directors approves a plan of conversion in the manner prescribed by law; (b) the conversion is permitted and complies with the law of the state or country in which the converted entity will be incorporated; and (c) the corporation has members and the members of the domestic nonprofit corporation become members of the converted entity.

The proposed new section also allows for the abandonment of conversion before the time the conversion becomes effective. In addition, the bill provides for the filing with the State of articles of conversion.

#### Effect of Conversion

This bill contains provisions regarding the effect of conversion, in that after conversion the converted entity continues to exist and owns all property of the converting entity and its liabilities and obligations. The converted entity remains subject to civil proceedings in Hawaii and must irrevocably appoint an agent for service of process in Hawaii.

#### **B. Director's Statutory Duties.**

The duties of directors of nonprofit corporations are set forth in section 414D-149, HRS. At common law, directors of nonprofit corporations (as well as trustees of charitable trusts) have a duty of loyalty. Section 414D-149, HRS, does not presently expressly recognize a duty of loyalty, although a director's duty to act "in good faith" also implies such a duty. Likewise section 414D-155, HRS, implies a duty of loyalty. This bill amends sections 414D-149 and 414D-155, HRS, to expressly recognize that a

director has a duty of loyalty. The express duty of loyalty will help to educate directors of their duty of loyalty and to better protect the nonprofit corporation.

**C. Technical Amendments.**

The bill amends section 414D-233, HRS, to clarify that no assets of a dissolving corporation shall be transferred or conveyed until after twenty business days, rather than just twenty days, after the corporation gives the Attorney General the required notice of intent to dissolve.

We respectfully request that you pass this bill and provide that this Act shall take effect upon its approval.



***Our Vision:** Charitable organizations have the philanthropic resources necessary to fulfill their missions for a better Hawaii.*

***Our Mission:** We advance philanthropy throughout Hawaii by actively promoting the practice of ethical and effective fundraising with education, training, advocacy, and mentoring for the benefit of all, with the spirit of aloha.*

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February 24, 2017/2:00pm  
Conference Room 325

House Committee on Judiciary

To: Representative Scott Y. Nishimoto, Chair  
Representative Joy A. San Buenaventura, Vice Chair

From: Sanae Tokumura, ACFRE, APR  
President

RE: HB 1027 HD1 – Testimony in Support

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My name is Sanae Tokumura, President of the Association of Fundraising Professionals – Aloha Chapter (AFP Aloha Chapter). The AFP Aloha Chapter advances philanthropy throughout Hawaii by actively promoting the practice of ethical and effective fundraising. We are committed to education, training, advocacy, and mentoring in the field of fundraising for the benefit of all, with the spirit of aloha. Founded in Hawaii in 1983, the Association of Fundraising Professionals (AFP) Aloha Chapter is a professional association whose membership is comprised of persons involved in non-profit development, non-profit management and fundraising consulting. The chapter members represent organizations on Oahu, Maui, Kauai and the Big Island.

I write in support of HB 1027 HD1 which imposes a duty of loyalty on directors and officers of nonprofit corporations, recodifies provisions that would allow nonprofit corporations to convert into and out of domestic nonprofit corporations, and gives the Attorney General additional time to review proposed dissolutions of nonprofits. AFP Aloha Chapter appreciates the efforts being made in this proposed legislation to make easier the conversion of a local nonprofit entity to a foreign nonprofit entity or vice versa.

Thank you for the opportunity to testify in support of HB 1027 HD1.



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

February 24, 2017

Testimony To: House Committee on Judiciary  
Representative Scott Y. Nishimoto, Chair

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

Subject: H.B. 1027, HD 1 – RELATING TO NONPROFIT CORPORATIONS.

Chair Nishimoto and Members of the Committee:

I am Tim Lyons, Legislative Chairman for the Aloha Society of Association Executives, a trade association composed of individuals who manage professional 501(c) (6) business organizations. We have confined our comments to only one (1) section of this bill. We do not think that when this bill was drafted, the drafters considered that these amendments would also apply to our type of non-profit organizations. We are not concerned with Section 1 and after a more thorough review have no problems with Section 2 or Section 3.

We note that the original bill had language regarding conflicts of interest which we believe are much clearer in the current law without the amendment and are best accomplished with a Conflict of Interest Policy an organization should adopt.

The previous language and interpretations were entirely too convoluted and confusing to be generally understood by the average administrator without the benefit of counsel who generally is not in attendance at most meetings except by special request.

We can support HD 1, as is.

Thank you.



**Testimony to the House Judiciary Committee  
Representative Scott Nishimoto, Chair  
Representative Joy San Buenaventura, Vice Chair  
Friday, February 24, 2017, 2:00 p.m.  
Conference Room 325  
HB 1027, HD 1 - Relating to Nonprofit Corporations**

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Dear Chair Nishimoto, Vice Chair Buenaventura and members of the JUD Committee:

On behalf of the Hawai'i Alliance of Nonprofit Organizations, I would like to offer our comments in **support of HB 1027 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 appreciates the efforts being made in this proposed legislation to make easier the conversion of a nonprofit entity to a for-profit entity or vice versa, and to allow the State Attorney General more time to review dissolutions of nonprofits.

Regarding imposing a duty of loyalty on directors and officers of nonprofit corporations, we understand the proposed amendment to require recusal of a board member in conflict, was removed in HD 1. This expectation of recusal is a best practice, in keeping with HANO's own *Principles of Good Governance and Ethical Practice: A Guide for Charities and Foundations* and should be reflected in nonprofit organizational policies. We understand that Chapter 414D-150 alludes to this, but it is not explicit; but we are comfortable with not amending this section and instead expressing this expectation through organizational governance policies.

Thank you for the opportunity to provide written testimony in support of these changes.

Mahalo,  
Lisa Maruyama  
President & CEO

## JUDtestimony

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From: mailinglist@capitol.hawaii.gov  
Sent: Thursday, February 23, 2017 1:58 PM  
To: JUDtestimony  
Cc: tasam@cades.com  
Subject: Submitted testimony for HB1027 on Feb 24, 2017 14:00PM

### **HB1027**

Submitted on: 2/23/2017

Testimony for JUD on Feb 24, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Trever Asam	Individual	Support	Yes

Comments: Aloha, Chair Nishimoto and members of the Committee, I am a private practice attorney and specialize in representing nonprofit corporations. Several years ago, certain provisions of the Hawaii Nonprofit Corporations Act relating to conversions of nonprofit corporations were deleted from the HRS. This was apparently done to prevent a specific type of transaction in which a nonprofit could be "converted" into a for-profit. When the changes were made, however, the entire section addressing "Conversions" was deleted. This had significant and unintended consequences, including that nonprofit corporations from other States could no longer become Hawaii nonprofit corporations. The proposed changes restore parts of the model act (used across the country) and would permit, for example, a California nonprofit corporation to "convert" to become a Hawaii nonprofit corporation. The sections that previously caused problems are still kept out of the Code. I believe these are good changes, and I thus support the "Conversion" portion of this legislation. Thank you for your time.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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