



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

DATE: Thursday, February 9, 2017 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Hugh R. Jones, Deputy Attorney General

Chair McKelvey 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." This bill, if enacted, would allow, under certain circumstances, a domestic nonprofit corporation to convert to a foreign nonprofit corporation. The bill also makes technical amendments to provisions regarding dissolution of certain nonprofit corporations and makes clarifying amendments to provisions concerning a director's statutory duties and the procedure by which "conflict transactions" are handled by directors of 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 When the Legislature repealed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This bill, if passed, will restore a portion of repealed section 414D-207, HRS, by: (a) authorizing domestic nonprofit corporations to convert to foreign nonprofit corporations; (b) creating a procedure regarding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-150, HRS, implies a duty of loyalty.

This bill amends sections 414D-149 and 414D-150, HRS, to expressly recognize that a director has a duty of loyalty.

C. Conflict Transactions.

At present, a director of a nonprofit corporation may vote on any transaction in which the director has a direct, or indirect conflict of interest as long as the conflict is disclosed and a majority of the board members who are free of any conflict approve the transaction pursuant to section 414D-150. This provision would require the recusal from voting of any director that has a direct, or indirect conflict of interest.

D. Technical Amendments.

The bill amends section 414-233, 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.

The Attorney General respectfully requests that you pass this bill.



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

February 9, 2017

Testimony To: House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair

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

Subject: H.B. 1027 – RELATING TO NONPROFIT CORPORATIONS.

Chair McKelvey 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 two (2) sections 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, 2 or 3 regarding conversions however Section 4 and 5 prompt us to have some comments.

Section 4 amends Section 414D-149 HRS, a section which we have long questioned inasmuch as it requires a director to discharge his duties not only as a Director but also as a member of a committee in a prescribed manner. We are not quite sure why a Director has a super imposed duty over that of other committee members merely because they happen to serve on a committee. We have no argument with the new language added in subsection 2 requiring a duty of loyalty to the corporation

however, we find that generally a duty of loyalty is considered to be part of a fiduciary responsibility and therefore would already be covered.

Secondly, we also note that in Section 5 of the bill, regarding a prohibition on voting in any transaction in which there is a conflict of interest, we believe that there may be situations where either the vote of the Director is needed or the conflict of interest is so minor as to not require a prohibition but merely a disclosure. Therefore we think there should be language that suggests that the Director could either declare their conflict for Board resolution or require that the Director take it upon himself to declare the conflict or recuse himself from voting. The automatic prohibition may not be appropriate in every single situation.

With those comments we appreciate the opportunity to testify.

Thank you.



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**Testimony to the Consumer Protection and Commerce Committee
Representative Angus McKelvey, Chair
Representative Linda Ichiyama, Vice Chair
Thursday February 9, 2017, 2:00 p.m.
Conference Room 329
HB 1027 - Relating to Nonprofit Corporations**

Dear Chair McKelvey, Vice Chair Ichiyama and members of the CPC Committee:

On behalf of the Hawai'i Alliance of Nonprofit Organizations, I would like to offer our comments in **support of HB 1027**, 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.

Regarding the proposal to amend the standards of conduct - provision HRS 414D-149, we support efforts to codify this imposed duty of loyalty on directors and officers of nonprofit corporations. This is in keeping with HANO's own Principles of Good Governance and Ethical Practice: A Guide for Charities and Foundations.

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

Mahalo,
Lisa Maruyama
President & CEO

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 10:12 AM
To: CPCtestimony
Cc: tasam@cades.com
Subject: Submitted testimony for HB1027 on Feb 9, 2017 14:00PM

HB1027

Submitted on: 2/6/2017

Testimony for CPC on Feb 9, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Trever Asam	Individual	Comments Only	No

Comments: Aloha, Chair McKelvey, Vice-Chair Ichiyama, 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" to 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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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 1:23 PM
To: CPCtestimony
Cc: fu_dog_5@yahoo.com
Subject: *Submitted testimony for HB1027 on Feb 9, 2017 14:00PM*

HB1027

Submitted on: 2/6/2017

Testimony for CPC on Feb 9, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
robert	Individual	Support	No

Comments:

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