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# A BILL FOR AN ACT

RELATING TO NONPROFIT CORPORATIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 414D, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§414D-       Purchase of memberships. (a) A public benefit  
5 corporation may not purchase any of its memberships or any right  
6 arising therefrom.

7           (b) A corporation other than a public benefit corporation  
8 may purchase its memberships only to the extent provided in  
9 section 414D-232."

10          SECTION 2. Section 414D-14, Hawaii Revised Statutes, is  
11 amended by amending the definition of "directors" to read as  
12 follows:

13          "Directors" means individuals, designated in the articles  
14 or bylaws or elected by the incorporators, and their successors  
15 and individuals elected or appointed by any other name or title,  
16 to act as members of the board. Any person who does not have



1 authority to vote as a member of the board is not a director as  
2 that term is used in this chapter, regardless of title."

3 SECTION 3. Section 414D-134, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) If the corporation has members, all the directors  
6 (except the initial directors) shall be elected at the first  
7 annual meeting of members, and at each annual meeting  
8 thereafter, unless the articles or bylaws provide some other  
9 time or method of election, or provide that some of the  
10 directors are appointed by some other person or [~~designated~~  
11 ~~representative.~~] by designation."

12 SECTION 4. Section 414D-155, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14 "(a) An officer with discretionary authority shall  
15 discharge the officer's duties under that authority:

- 16 (1) In good faith;
- 17 (2) In a manner that is consistent with the officer's duty  
18 of loyalty to the corporation;
- 19 (3) With the care an ordinarily prudent person in a like  
20 position would exercise under similar circumstances;
- 21 and



1           (4) In a manner the officer reasonably believes to be in  
2           the best interests of the corporation[-] and its  
3           members, if any."

4           SECTION 5. Section 414D-222, Hawaii Revised Statutes, is  
5 amended by amending subsection (i) to read as follows:

6           "(i) A public benefit corporation shall give written  
7 notice to the attorney general twenty business days before it  
8 sells, leases, exchanges, or otherwise disposes of all, or  
9 substantially all, of its property if the transaction is not in  
10 the regular course of its activities, unless the attorney  
11 general has given the corporation a written waiver of this  
12 subsection."

13           SECTION 6. Section 414D-232, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15           "(a) A corporation other than a public benefit corporation  
16 may purchase its memberships if, after the purchase is  
17 completed:

18           (1) The corporation would be able to pay its debts as they  
19           become due in the usual course of its activities; and

20           (2) The corporation's total assets would be equal to at  
21           least the sum of its total liabilities."



1 SECTION 7. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect upon its approval.



**Report Title:**

Nonprofit Corporations; Public Benefit Corporations; Members;  
Directors

**Description:**

Amends the Hawaii Nonprofit Corporations Act to: clarify that a public benefit corporation may not purchase its memberships; clarify that the term "director" only includes those who have the authority to vote as a member of a board; clarify that a corporation with members may provide for appointment by some other person, or designation, of some of its directors; and allow the attorney general more time to review a proposed sale of substantially all of the assets of a corporation, other than in the regular course of its activities. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

