

STAND. COM. REP. NO.

540

Honolulu, Hawaii

February 17, 2017

RE: H.B. No. 1027

H.D. 1

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Ninth State Legislature  
Regular Session of 2017  
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 1027 entitled:

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

begs leave to report as follows:

The purpose of this measure to assist nonprofit corporations by:

- (1) Authorizing a domestic nonprofit corporation to convert to a foreign nonprofit corporation, creating a procedure therefor, and clarifying the legal effect of conversions;
- (2) Expressly recognizing that a director of a nonprofit corporation has a duty of loyalty and requiring recusal from voting of any director that has a direct or indirect conflict of interest; and
- (3) Providing the Attorney General with additional time to review proposed dissolutions of nonprofits.

The Department of the Attorney General, Hawaii Alliance of Nonprofit Organizations, and a concerned individual testified in support of this measure. The Aloha Society of Association Executives and a concerned individual provided comments.

HB1027 HD1 HSCR CPC HMS 2017-2232



Your Committee notes that the Aloha Society of Association Executives voiced concerns regarding a nonprofit director's duty of loyalty, as well as imposing a prohibition on a director from voting in matters where a director may have a potential conflict of interest. Your Committee shares the concerns on the prohibition on voting and the tremendous impact this could have on decision making by governing boards of nonprofits, especially smaller boards. Although your Committee also has concerns regarding the explicit duty of loyalty, the Attorney General testified that a duty of loyalty for nonprofits is already contained in common law. However, this statute was enacted in 2000 and has not been adjudicated on this point. As such, your Committee finds that explicitly codifying a duty of loyalty will prevent any confusion as to a nonprofit director's duty.

Your Committee has amended this measure by:

- (1) Removing the prohibition on voting by a director of a nonprofit with a potential conflict of interest;
- (2) Changing its effective date to July 1, 2112, to facilitate further discussion; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1027, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1027, H.D. 1, and be referred to your Committee on Judiciary.

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

  
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ANGUS L.K. MCKELVEY, Chair



