

Honolulu, Hawaii

FEB 15 2017

RE: S.B. No. 893
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 893 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Restore procedures that allow nonprofit corporations to convert into and out of domestic nonprofit corporations;
- (2) Impose a duty of loyalty on directors and officers of nonprofit corporations;
- (3) Prohibit a director from voting on any matter in which the director has a conflict; and
- (4) Increase the length of time that the Attorney General has to review proposed dissolutions of public benefit corporations.

Your Committee received testimony in support of this measure from the Department of the Attorney General, Hawai'i Alliance of Nonprofit Organizations, and one individual. Your Committee received comments on this measure from the Aloha Society of Association Executives.

Your Committee finds that Act 37, Session Laws of Hawaii 2012 (Act 37), repealed a provision in the Hawaii Revised Statutes that



allowed a domestic nonprofit corporation to convert to a foreign corporation or any other business entity. In hindsight, Act 37 went too far, as it effectively prevented domestic nonprofit corporations from converting to foreign nonprofit corporations. This measure restores the provision that allows nonprofit corporations to convert into and out of domestic nonprofit corporations, establishes the procedure for conversion, and specifies the effects of a conversion.

Your Committee further finds that although directors of nonprofit corporations have a duty of loyalty at common law, existing statute does not expressly recognize such a duty of loyalty. This measure establishes a duty of loyalty for directors and officers of nonprofit corporations. This measure also requires the recusal from voting of any director that has a direct or indirect conflict of interest.

Your Committee has heard the concerns raised in testimony regarding the recusal from voting on any matter in which a director has a conflict. According to testimony received by your Committee, there may be situations where either the vote of a director is needed or the conflict of interest is so minor that a disclosure, rather than a prohibition, is needed. Your Committee requested the assistance of the Department of the Attorney General (Department) to clarify the conflict of interest concerns raised in testimony and, if needed, suggest language that would address these concerns.

Upon further consideration, the Department informed your Committee that the concerns regarding conflict of interest are already addressed in the existing statute, so additional language addressing these concerns is therefore unnecessary. The Department noted to your Committee that the disclosure and voting process for directors, as contained in this measure, is not compulsory, but rather a "safe harbor" procedure for a board to approve a transaction. As corporate matters may be approved by the votes of non-conflicted directors, a conflicted director's vote is not necessary, nor does it count, when the safe harbor procedure is followed. The Department also noted that existing statute makes it clear that when a majority of directors who have no interest in a transaction vote to approve that transaction, there is a quorum present. Quorum is not defeated by using the safe harbor procedure, and as such, a conflicted director's vote or presence is not needed to meet quorum requirements.

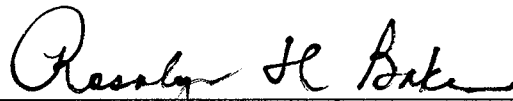


Your Committee has amended this measure by:

- (1) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 893, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 893, S.D. 1, and be referred to your Committee on Judiciary and Labor.

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




ROSALYN H. BAKER, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:* SB893	Committee Referral: CPH, JDL	Date: 2/7/17		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	/			
NISHIHARA, Clarence K. (VC)	/			
CHANG, Stanley	/			
ESPERO, Will	/			
IHARA, Jr., Les				/
KIDANI, Michelle N.				/
RUDERMAN, Russell E.	/			
TOTAL	5			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes