



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

S.B. NO. 2968, RELATING TO THE PROTECTION OF CHARITABLE GIVING.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE HOUSING

DATE: Wednesday February 13, 2008 **TIME:** 9:00 AM

LOCATION: State Capitol Room 016

DELIVER TO COMMITTEE CLERK, RM 219, 1 COPY

TESTIFIER(S): Mark J. Bennett, Attorney General
or Hugh R. Jones, Deputy Attorney General

Chairs Taniguchi and Kokubun and Members of the Committees:

The Attorney General strongly supports the passage of this bill with the amendments noted in Exhibit A. This bill will re-enact a registration law for charities that solicit funds in Hawaii and will strengthen Hawaii's charitable solicitation law. The bill is based upon the Model Act for the Solicitation of Funds for Charitable Purposes drafted by the National Association of Attorneys General and the National Association of State Charity Officials.

According to some published reports, as much as ten percent of charitable giving results from some form of solicitation fraud. This amounts to almost \$29.6 billion annually. Based on a 2002 study by the Hawaii Community Foundation, this would amount to \$43 million in Hawaii annually.

Hawaii has nearly 5,000 tax exempt charitable organizations that administer \$16 billion in charitable assets and employ over 48,000 workers without any systematic oversight program by the State. Hundreds of mainland based charities also actively and regularly solicit funds from Hawaii residents.

In a series of articles running in the Honolulu Advertiser in September, a copy of which is attached to this testimony as Exhibit B, Hawaii was described as having the most lax charitable oversight

laws in the Nation. The series pointed out that Hawaii is one of only eleven states that do not have a charity registration requirement. Hawaii had a charity registration law from 1969 to 1994, when it was repealed.

The Honolulu Advertiser series quoted the head of one national charity rating service, Charity Navigator, as saying "there is not another state with less of a commitment to protecting donors." This bill will re-enact a charitable registration requirement that existed in Hawaii from 1969 to 1994 and provide for limited exemptions from the registration requirement. The president of the New York based Council on Accreditation, an expert on charity accreditation, recommended the passage of a charity registration law at the annual meeting of the Hawaii Alliance of Nonprofit Organizations ("HANO") in November.¹

How Does Having a Charity Registration Law Help the Public?

The re-enactment of a registration requirement will protect the public from sham charities. Registration will allow donors to contact the Attorney General and obtain some basic information about the nonprofit and its fundraiser--who they are, where they are, how much money they took in last year, and how much of the funds made it into the coffers of the nonprofit for which they were soliciting. Second, registration forms and financial reports provide a wealth of information to enforcers. It is usually through registration that regulators can find out who are the persons likely making a solicitation, where they are making it from, who the principals are, what other organizations they are involved with, roughly what they do with the money they raise, and whether they are conscientious about registering and supplying the required information. Investigators use all of this information to get to the bottom of a suspicious matter.

¹ See "Experts Advice: Register Charities" Honolulu Advertiser November 2, 2007

Summary of this Bill

To minimize burdens on the nonprofit sector, this bill proposes to use a three-page Universal Registration Statement used in thirty-five states. This will facilitate registration by mainland based charities that solicit nationwide. A copy of the form is attached as Exhibit C.

The bill proposes limited exemptions from the registration requirement for:

- Parent teacher associations or educational institutions that are registered or accredited.
- Nonprofit hospitals licensed by the State.
- Persons who solicit solely for exempt organizations.
- Charities that normally receive less than \$25,000 in contributions unless they pay compensation to fundraisers.

This bill proposes to require registered charities to annually file a financial report along with an annual sliding scale fee based on the charity's income that is capped at \$750.00. The bill allows the Attorney General to accept the charity's IRS Form 990 as the annual financial report. However, the bill also proposes to require audited financial statements for nonprofits having over \$500,000 in annual income--a requirement that will affect less than ten per cent of Hawaii nonprofits and a practice recommended by many state nonprofit associations. Most states have lower thresholds for the filing of audited financial statements.

The re-enactment of Hawaii's charity registration law will become more vitally important because the IRS has announced that beginning in 2009, the filing threshold for IRS Form 990 will increase from \$100,000 in income to \$1 million. As a result, the detailed financial and operating data that is contained in Form 990 and is currently available to the public, will not be available for over 93 percent of Hawaii charities. Restoration of Hawaii's

charity registration law would help plug this "gap" in financial and operating data concerning charities.

In addition, the bill establishes an annual fee for registered charities that is paid with an annual financial report that will be available to the public and will fund oversight and additional personnel positions that will be required to review registration statements. The bill also will repeal an existing bonding requirement for charitable fundraising counsel that has been found by at least one court to violate the First Amendment. It will also make other clarifying amendments to Hawaii's charitable solicitation law, including:

- Adds new definitions of "person" and "gross receipts" to the law.
- Amends the financial report requirement by paid solicitors to clarify that solicitors must report contributions received nationally and from Hawaii donors.
- Requires commercial co-venturers (business who pay charities a percentage of product sales) file a written consent from the charity with the AG's department that is signed by the charity.
- Adds to the list of "prohibited acts" in the solicitation law, a charity's contracting with an unregistered professional solicitor or fundraising counsel.
- Allows the AG to apply to the circuit court for injunctive relief, or for the appointment of a receiver to ensure due application of charitable funds.
- Amends the registration section for solicitors and fundraising counsels to expressly describe what information must be contained in the registration statement to avoid First Amendment problems giving the AG too much discretion over what must be provided.

Requested Amendments

In order to address a few concerns that have been raised by members of the nonprofit sector the Attorney General requests the Committees to make three amendments to the bill that are contained in Exhibit A. The first amendment delays the due date of the annual financial report to eight months after the close of the taxable year. This will give charities sufficient time to complete their audited financial statements or to prepare and file their Forms 990 or 999EZ with the Internal Revenue Service. The second amendment clarifies that the registration statements filed by charities and are available for public inspection except the residential addresses of any officer or director and the bank account information that a charity must submit in an attachment to the registration form that identifies the bank and account information shall be confidential under chapter 92F.

Finally, we recommend that the effective date of the amendments made by section 2 of the bill be changed from January 1, 2009, to August 15, 2008. This will allow charities to begin filing registration forms and financial reports before the end of 2008.

Accordingly, we respectfully request favorable consideration and passage of this bill with the amendments noted above.

EXHIBIT A

Amendment No. 1

We recommend that the second sentence of subsection (a) of section 467B-B, Hawaii Revised Statutes, in section 2 of the bill on page 2 at lines 17-22 be revised as follows:

"The charitable organization shall file the report not more than [~~four~~] eight months following the close of its fiscal year, or on or before the date the organization files a Form 990 or 990EZ with the Internal Revenue Service, which report shall be accompanied by a fee as prescribed by subsection (d) and shall be signed by two authorized officers of the organization, one of whom shall be the chief fiscal officer of the organization."

Amendment No. 2

We recommend a new section be added to the bill as follows:

SECTION __. Section 467B-8, Hawaii Revised Statutes, is amended to read as follows:

"§467B-8 Information filed to become public records.
Statements, reports, professional fundraising counsel contracts or professional solicitor contracts, and all other documents and information required to be filed under this chapter or by the attorney general shall become government records in the department and be open to the general public for inspection at such times [~~and under such conditions as the attorney general may prescribe.~~]; provided that information in any registration statement concerning the residential addresses of any officer or

director or that identifies a charitable organization's financial or banking accounts shall be confidential under chapter 92F."

Amendment No. 3

Finally, we recommend that section 12 of the bill be amended to read as follows:

SECTION 12. This Act shall take effect upon its approval, except the amendments made by section 2 of this Act shall take effect on August 15, 2008.

EXHIBIT B



The Honolulu Advertiser

September 16, 2007

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FYI ADVERTISER



Hawai'i's rules lax on oversight of charities

BY ROB PEREZ
Advertiser Staff Writer

Hawai'i is one of only 11 states that do not require charities to register, a gap that allows thousands of local nonprofits to raise millions of dollars from the public with virtually no regular oversight from regulators.

The lack of a registration requirement, considered the foundation of an effective monitoring system by many national experts, means charities can collect donations from residents without anyone from the state making even cursory checks to see how that

THE GOOD NEWS

The majority of Hawai'i charities keep a sharp focus on their mission of helping others | A6

money generally is spent.

"Charities aren't getting much oversight in Hawai'i," said Peter Swords, who has taught nonprofit law at Columbia University in New York for about 30 years. "With nobody looking at you, it means people can abuse the charity system. It's as simple as that."

Although the vast majority of Hawai'i's 5,000 public charities follow the rules and have financial safeguards in place, some organizations invariably stray from their tax-exempt missions — usually without drawing any scrutiny from the state.

Without a registration system that provides for annual reviews, regulators typically intervene only if someone complains or the questionable conduct is flagged some other way.

Take the case of Alphabetland

SEE CHARITIES, A6

THE ADVERTISER'S VIDEO REPORT



A Better Business Bureau of Hawaii official talks about what to look for in a charity.

HONOLULUADVERTISER.COM

CONTINUED FROM A1

Preschool & Kindergarten, a family-run, Waipahu-based charity that has an average monthly enrollment of 300 students and annual revenues of roughly \$2 million, according to its tax returns.

For three consecutive years, starting in 2003, the Waipahu nonprofit paid one of its top executives more than \$250,000 annually, far more than what officials earn at education institutions such as the state-run AIECAA Preschools of Hawaii, a nonprofit that had double the enrollment and revenue as Alphabetsland during that same period. Its top executive earned less than \$75,000 a year.

Over roughly that same period, Alphabetsland also leased more than \$100,000 to another office of the charity — the husband of the top-paid one — while he earned a salary of up to \$120,000. Hawaii law prohibits nonprofits from lending money to their officers and directors. The husband served in both roles.

The wife, who, which raised questions of excessive compensation, and the husband's loan were only noted on Alphabetsland's federal tax returns for its 2003-2004.

But because Hawaii has no registration system, which usually includes the filing of a charity's tax return, the Alphabetsland transactions went unnoticed by state regulators — until one of them read a national story about questionable loans to nonprofit officials. The story had a brief Hawaii reference, eventually leading the state attorney general's office to the Waipahu charity.

Authorities found more red flags once they started digging. They learned, for instance, that the tax-exempt organization had paid its husband-and-wife management team, Gary and Amy Arizaba, about \$1 million from 2000 to 2003 (Gary Arizaba died in 2004) and that the nonprofit was leasing two luxury cars, a Jaguar and Volvo, for \$1,000 a month.

They also could see from the tax returns that the Arizabas were listed as Alphabetsland's only board members during the period the husband was borrowing money and the wife's annual salary peaked at \$124,800. The couple's daughter was added as a third board member in 2004, the returns show.

Such an arrangement runs afoul of standards that watchdog groups such as the Better Business Bureau recommend for governance of charities, including having a board that is independent, free of self-dealing and has at least five members.

Alphabetsland declined comment except to say it was in discussions with the AG's office, but not admitted any liability and cautioned against jumping to conclusions about the issues raised by the state.

"We are confident that the matter should be resolved in the not-too-distant future to everyone's mutual satisfaction," the charity said in a public statement.

The AG's office declined comment because the case is still pending.

CRIMES AND MISDEMEANS

The issue of charitable oversight has taken on greater significance in Hawaii because of some relatively recent high-profile cases of misconduct or alleged misconduct. Among the cases: A Salvation Army official on Oahu was fired last year after he stole more than \$300,000 in money and pay that elderly donors had intended



Alphabetsland Preschool & Kindergarten, a Waipahu charity, drew investigation from the state because of irregularities such as a \$264,000 salary to one official and a loan to another — a husband and wife who were also its only board members.

ALPHABETLAND PRESCHOOL & KINDERGARTEN

2006 DATA

| | |
|------------|-------------|
| Enrollment | 300 |
| Revenue | \$1,882,482 |
| Expenses | \$1,904,717 |
| Excess | -\$42,235 |
| Assets | \$958,035 |
| President | Amy Arizaba |
| Salary | \$109,800 |

Source: Federal tax return

lengths to protect their integrity from the trust of donors, the security of their investments, and the safety of their children.

"I can't think of another case that has raised as much concern as this one," said Kevin Thoma, president of Hawaii Community Foundation. "It's a sad state of affairs that the AG's office doesn't get enough funding to provide oversight under the existing system, let alone under an expanded one. They clearly need more resources, the department provides the bulk of that support, including maintaining a Web site on charity funding. Jones, however, also has other charity-related duties. The responsibility of the tax division is to provide representation to the Department of Taxation."

"I don't think we need four budgets, one for each of the various departments," said Jones. "I think we need one for the entire department."

"I'm not aware of any wholesale abuses," said John Flanagan, chief executive of the Hawaii Alliance of Nonprofit Organizations. "I think Hawaii nonprofits have a pretty good track record."

"The board of directors of each organization provides some oversight," said Flanagan. "But at least some oversight is better than none."

Proposals for registration systems provide states with valuable information on what groups are out there collecting money, what they're collecting it for, how they're spending it in a broad sense and other aspects of a charity's operations. The information can help enforcement officials spot red flags such as questionable transactions or compression deals, and answer questions from the public.

Having regulators review annual filings also can serve as a deterrent to those who are less than forthcoming and designed to give donors confidence that someone independent of the organization is watching to

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CHARITIES

CONTINUED FROM A8

Given such weighty numbers, even if a tiny fraction of charities stray from their missions and divert assets for non-charitable purposes, the impact can be significant, according to regulators.

NO REGISTRATION SYSTEM

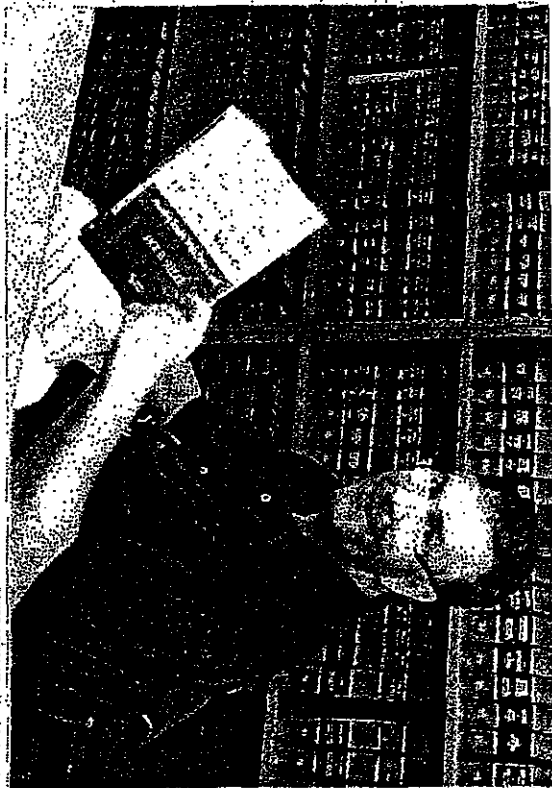
That was among the arguments the AGC's office made several years ago when it attempted to set a registration system resurrected in Hawaii. Registrations were required but until legislators repealed the law in the mid-1990s, 300 lawmakers were unwilling to support a new statute that the AGC's office proposed in 2001 and 2002.

While Hawaii has a strong law requiring paid auditors for charities and another statute allowing the state to remove directors for fraud or gross abuse, Jones said a registration system would provide valuable information that would help the public separate the good charities — the vast majority — from the bad and enable the AGC to face to better monitor the industry.

One of the big drawbacks of not having an effective system is that consumers have no single place to turn to for comprehensive, timely information about charities seeking donations. Wouldn't donors, for example, want to check to see if an organization that they're unfamiliar with and that is asking for donations is a legitimate charity registered with the state. They also can't see if the organization has provided the state with information on its finances.

Some watchdog groups, such as the Better Business Bureau (www.bbb.org) or Charity Navigator (www.charitynavigator.org), provide online evaluations of certain charities, but the offerings seem to be limited to the participation of charities to voluntarily.

A charity's federal tax returns, called 990s, also are available online (www.irs.gov/efile), but regulators and critics often lament that the re-



MELODY RAY/STAFF PHOTO

Hugh Jones is the deputy attorney general assigned to keep watch on Hawaii's charity sector — along with the other duties in the department. He's the only official assigned even part-time to check on charities.

TAX DEDUCTIONS AT RISK

Without a registration system, local donors who contributed more than \$74,000 in 2005 and early 2007 to the Music Foundation of Hawaii's Heli Music Foundation of Hawaii likely wouldn't have known that the charity was involuntarily dissolved by the state Department of Commerce and Consumer Affairs in 2004 and not re-registered until January 2007.

That meant the donors' contributions during that period were not tax-deductible, according to the AGC's office.

Under a typical registration system,

a significant change in status — such as an involuntary dissolution — would have to be reported to the state AGC's office, and that information likely would have been added to what was publicly available about the charity.

The Hawaii AGC office came across the music foundation case only because the charity's paid fundraiser, Hawaii Promotions, was required to register with the state under the charitable solicitations law. All paid collections fall under that law.

Hawaii Promotions' license was not renewed in May for 90 days, partly for providing misleading information to the foundation domain, according to the AGC's office. The company didn't contest the suspension and paid a \$3,000 fine.

In providing receipts to the donors, Hawaii Promotions included the federal tax identification number and a "keep this portion for your records" statement, implying that donations were tax-deductible, Jones said in a May letter to the fundraiser.

But even though the foundation had formally incorporated again, its previous tax-exempt status didn't apply to the new organization, meaning donations in 2006 and 2007 were not tax-deductible, Jones said in the letter.

Johnny Kai, the foundation's executive director, denied that the charity or the fundraiser was attempting to mislead anyone.

"Hugh does a terrific job. But frankly we need four Hughes, not just one," KAI, 71, HAWAII, president of Hawaii Community Foundation, speaking of Deputy Attorney General Hugh Jones, who provides oversight of Hawaii charities.

Office sent him a notice, according to Kai.

He also said the IRS recently told him the foundation's tax-exempt status still was good — the IRS' Web site indicates as much — but the agency recommended that the charity reapply anyway because of the state's conclusion. Kai has done that.

"It was all innocent," he said. "We weren't trying to fool anybody."

The need to oversee charities is just but limited to the smaller, less obvious ones, analysts say.

Fifty-plus, more or less, in substance, organizations also can slip-by, sometimes inadvertently.

That opportunity was the case when the Honolulu Academy of Arts, as part of a compensation package to the newly hired president and director in 2003, named Stephen Little midway to help him with a home purchase.

When the charity's board learned the following year about the AGC's position on such landing practices, it immediately addressed the issue: the board and Little decided that he would step down as an officer of the academy but maintain the position as chief fundraiser.

"This was done in compliance with the law and, to prevent either a conflict of interest or the perception of a conflict of interest," Little said in an e-mail.

He repaid the loan in full in 2005.

Although the academy mentioned the loan on its tax returns the past several years, the AGC's office wasn't aware of it until last week — when The Advocate called to inquire about it.

Reach Rob Peers at 525-8054 or rpeers@hawaiiadvertiser.com

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MONDAY | September 17, 2007

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FYI ADVERTISER



Moves to register charities doomed by political clout

BY ROB PEREZ
Advertiser Staff Writer

After failing to get a charity registration bill passed in the 2001 legislative session, the state attorney general's office changed strategy.

It stripped the proposal of some of the requirements the industry considered onerous and, the following year, arranged to have a new measure introduced.

This time the attorney general's office proposed the simplest, most minimal form of registration: Charities would simply have to submit a copy of their federal tax returns each year.

The bill didn't even make it past the first committee.

As a result, Hawaii five years later remains one of the few states that do not require charities to register, allowing thousands of organizations to take in donations from the public with virtually no regular oversight from regulators.

The fate that the registration bills met in 2001 and 2002 underscores the influence that the non-profit industry has at the Legislature.

The membership rosters of many of Hawaii's most prominent charities read like a list of

SEE CHARITY, A2

UNGUARDED GIVING

WHO'S REGULATING HAWAII'S CHARITIES? A HONOLULU ADVERTISER SPECIAL REPORT

SUNDAY Charities in Hawaii have little oversight
TODAY The fate of legislation that would watch the industry
TOMORROW Mining the phone lines of charity call centers
WEDNESDAY Models for oversight of charities

Charity

CONTINUED FROM A1

who's who in the community. Corporate heads. Civic leaders. Major lobbyists. Government officials. Union executives. Even state legislators sit on the volunteer boards. So if a particular bill generates strong opposition in the nonprofit community, the chances of passage are slim, according to some in the industry. "There are some very influential, very important business people on those boards, and they're the ones saying more regulation is not good," said Jonathan Won, who has lobbied at the Legislature for various nonprofit groups for the past 30 years. "The whole idea of regulation — people just don't like it, especially business people."

The reasons nonprofit representatives cited back then to lobby against the bills are similar to what they cite today in expressing reservations about a registration system. Critics of the 2002 bill called the requirements overly broad. They said a registration system would put unreasonable burdens on nonprofits, especially smaller ones, hindering their ability to carry out their missions. They said abuse hadn't become a big problem in Hawaii. If the state needed copies of tax returns, they added, it could request them from the federal government.

But national experts say requiring charities to register is important for states to understand the industry landscape and develop an effective oversight system. "It's a first step, and not even a big step," said Trent Stamp, president of Charity Navigator, an organization that evaluates charities. Getting Hawaii's legislators to agree to such a step, however, could be difficult, according to Won and others familiar with the legislative process.

STRIKING A BALANCE Current and former legislators say more oversight of the industry hasn't taken hold at the Legislature partly because of a lack of a public outcry for change. But some current lawmakers say they welcome a dialogue on the issue. Sen. Rosalyn Baker, the Senate Ways and Means chairwoman, said there is a need for nonprofit board members to better understand their fiduciary duty

A GENEROUS LOT
 Hawaii's residents in 2001 gave roughly \$430 million in goods and money to local and national charities. Some findings from a 2002 study commissioned by the Hawaii Community Foundation:
92% OF ALL HOUSEHOLDS GAVE, COMPARED WITH 68% IN 1998
 • **Kauai** was the most generous county, with 97% of all households giving, followed by O'ahu at 92%, Maui at 90% and the Big Island at 87%
THE AVERAGE DONATION PER HOUSEHOLD WAS \$1,035, COMPARED WITH \$694 IN 1998
 • Nearly 70% of respondents gave because they believed the organization was best suited for the job; 68% gave to ease pain and suffering. The least popular reason cited: 1% gave out of guilt.
 • Supporting fundraisers was the most popular form of giving, followed by giving to collection boxes. Phone requests were among the least popular.

The study is available on the foundation's Web site at: www.hawaiicommutinyfoundation.org/doc_bin/publications/HCF_GivingStudy2002.pdf

NO NEED TO REGISTER
 Eleven states do not require charities to register:
 Hawaii, Nevada, Idaho, South Dakota, Indiana, Texas, Iowa, Vermont, Montana, Wyoming, Nebraska

Source: Multi-state Filers Project, National Association of State Charity Officials

to the charities, perhaps through better training. She also said the state can play a role in improving monitoring of the industry. "If we're going to have any meaningful oversight, I think it has to be done at the state level," Baker said. "It seems to me we need to make sure the nonprofits are on the up and up, and people providing donations should have assurance their money is going as it's intended." The key in developing legislation is striking a balance, said Brian Schatz, a former legislator who now heads the charity Helping Hands Hawaii. "We've swung from the extremes, from overregulating and making everything subject to rigorous auditing standards to doing nothing at all," Schatz said. Schatz shares the view of some in the industry that nonprofits would support a registration requirement that would give the

state more information about charities as long as fulfilling that requirement doesn't become a bureaucratic burden, interfering with their missions. Kelyin Taketa, president of the Hawaii Community Foundation, believes education, self-policing and self-reporting are more effective than creating additional government oversight. "It's less glamorous but, frankly, it'll be more robust on what it can achieve," Taketa said. John Flanagan, president of the Hawaii's Alliance of Nonprofit Organizations, said getting the Internal Revenue Service, which has a wealth of information on charities, to share more of that information with the state would be a better answer than increased regulation. That will be especially so as the IRS requires more organizations to file their tax returns electronically and as improved tax forms are phased in, increasing the timeliness and ability to analyze the information, Flanagan said. "We're basically very much in favor of accountability," he said. "That's not the same thing as regulation." But analysts and regulators said recent efforts to get the IRS to share more information mostly have been unsuccessful. They also said the federal tax forms, called 990s, often are inaccurate, incomplete or untimely and that requiring charities to fill out comprehensive registration forms would provide the state and public with more useful

CHARITIES, CHARITIES EVERYWHERE
 Hawaii has more than 5,600 charitable organizations, with assets of nearly \$14 billion.

| | | |
|--|---|---|
| 5,002 Public charities | \$5.6 billion Total revenue reported on 990s | 1 per 255 residents Public charities per capita, the 10th highest among 50 states |
| 559 Private foundations | \$13.98 billion Total assets reported on 990s | |
| 2,164 Number of organizations filing Form 990 tax returns* | *Organizations with income of \$25,000 or less and most faith-based groups are not required to file 990s. | |

Source: National Center for Charitable Statistics, Advertiser research

information. Many states use a uniform registration statement, which includes such information as whether the organizations or their fundraisers have ever had their registrations denied or suspended, whether they've entered into consent decrees with regulators and what fundraising methods the charities use. In addition to completing the statement, the charities often are required to provide copies of their tax returns. Hugh Jones, the deputy attorney general who oversees charity oversight for the state, said his office supports adopting a registration system and providing more resources for monitoring the industry. It also favors requiring audited financial statements for nonprofits with incomes exceeding \$250,000. As difficult as it may be to get the industry and regulators to agree on legislation, many believe something needs to be done to improve the existing system and boost donor confidence. "I don't think doing nothing is an option," said Schatz, the charity executive.

RED FLAG WATCH
 Without a registration system, the attorney general's office is able to provide regular oversight to only one small slice of the industry, and that's only because of U.S. not state, law. Private foundations, which make up about 10 percent of the charitable organizations in Hawaii, are required under federal law to provide a copy of their 990s to the attorney general's office. The office reviews each of those returns and pursues any red flags. Such was the case with The Catalyst, a private foundation that promotes global harmony and a "flag for all people," according to its tax returns. The organization is run by Honolulu

Future, for instance, paid its president \$16,000 in 2004 for working an average of eight hours a week, tax records show. The charity's president, C. Barry Raleigh, a renowned scientist, also was a full-time faculty member at the University of Hawaii that year. On its face, a six-figure fee for essentially a day's worth of work each week would raise questions about excessive compensation. But Raleigh in an e-mail said he worked much more than eight hours a week, including on weekends and holidays. He said the university allows faculty to work only eight hours weekly on consulting, and the remainder of the week he did the work for which UH paid him. "I put in over 12 years working on behalf of CSF as its president without compensation of any sort, using my free time to do so," he wrote. "If you included that time in the calculation, I was paid \$10,000 per year or \$25 per hour."

Raleigh said the charity's board approved his consulting fee, and his paid work lasted for slightly more than a year, ending in April 2006. In a speech to nonprofit executives last year, Jones said his office has made numerous inquiries of foundations based on its reviews of their 990s. Among the examples he described was a foundation that was formed to operate a home for autistic children but for numerous years leased the property to college students instead. The tax returns of another organization indicated that a trustee was paid \$46,000 for working an average of zero hours per week. If those kinds of red flags were discovered through a regular review of foundation 990s, what kind are going unchecked because the vast majority of Hawaii's charities operate without such government scrutiny, analysts ask.

Given the lack of oversight, Daniel Borochoff of the American Institute of Philanthropy had this simple advice: "Let the donor beware." Reach Rob Perez at 525-8054 or rperez@honoluluadvertiser.com. What are your thoughts on the state's oversight of its charities? Join the conversation at HONOLULUADVERTISER.COM For previous articles in this series, go to HONOLULUADVERTISER.COM/CHARITIES

Form 990 Return of Organization Exempt from Federal Income Tax
Under section 501(c), 527, or 4947(a)
Benefit

UNGUARDED GIVING

WHO'S REGULATING HAWAII'S CHARITIES?

State to unleash first nonprofit watchdog

Oregon's registration system also could help Hawaii police industry

BY ROB PEREZ
Advertiser Staff Writer

The state later this year is expected to hire its first employee dedicated exclusively to helping monitor charities and their fundraisers.

The legal assistant at the attorney general's office will help several deputies who provide charity oversight and enforcement on a part-time basis, juggling those duties with other noncharity-related

ones.

The hiring, authorized by the Legislature this year, will underscore just how far Hawaii lags many other states in budgeting resources to keep tabs on the thousands of charities that solicit money from the public.

New York, for instance, had more than 50 budgeted positions when Hawaii Deputy Attorney General Hugh Jones conducted a December 2004 charity-oversight survey on behalf of the National Association of State Charities Officials. At the time, Hawaii had none.

SEE CHARITY, A2

How are your donations used? Where to find out

Do you know how much of your donation goes to the good deeds a charity is supposed to perform?

Or how much the top executive of your favorite charity is paid?

Find out through our searchable database of more than 650 Hawaii charities. It's at

HONOLULUADVERTISER.COM/FYI

FYIADVERTISER



For previous articles in this series, go to HONOLULUADVERTISER.COM/CHARITIES

UNGUARDED GIVING

WHO'S REGULATING HAWAII'S CHARITIES? A HONOLULU ADVERTISER SPECIAL REPORT

Charity

CONTINUED FROM A1



What are your thoughts on the state's oversight of its charities? Join the conversation at HONOLULUADVERTISER.COM

The state doesn't have more people in such jobs partly because it lacks a registration system. Hawaii is one of only 11 states that do not require charities to register, a gap that national experts say opens the door wider for potential abuse.

Some states with more aggressive programs have entire divisions or sections devoted to monitoring the industry.

Oregon is one of them. While not among the leaders in terms of the number of personnel devoted to charity oversight, Oregon's Department of Justice system is lauded by experts for applying the right mix of regulation and education in the marketplace. Some believe Oregon's system could serve as a guide for Hawaii as politicians, nonprofit executives, regulators and others debate whether the state should play a larger role in keeping tabs on the industry.

"It's a good balance of protecting the public's interests and allowing nonprofits to emerge and provide important public services," said Linda Golaszewski, interim director of Portland State University's Institute for Nonprofit Management.

"I believe most Oregon charities find the Department of Justice oversight to be quite helpful and not burdensome," said Kay Suhl, a consultant who has worked with the industry there for years and co-authored a handbook on Oregon nonprofits.

SYSTEM'S BENEFITS

Cynthia Cumfer, an attorney who helped Sohl write the handbook, said the main benefit of Oregon's registration system is that it provides an independent form of oversight while giving the public a place to submit concerns or requests for information.

The independent oversight is

important given that charity boards sometimes have a "cozy relationship" with the executives of the organizations they serve, Cumfer said. The system also has helped board members better understand their fiduciary duties, to the nonprofit, she said.

Oregon requires charities to register only once, listing basic information such as the nonprofit's mission, primary county of operations and key officials. The charities also must submit annual financial reports. Even the smallest organizations must turn in the yearly reports, which cover such things as:

- Whether a certified public accountant audits the organization's financial records. If so, the auditor's report must be included.
- Whether the nonprofit has a contract with a fundraiser to solicit Oregon residents.
- Contact information of the person who keeps the charity's records.

• A list of key employees and directors and what compensation, if any, they get.

• Total revenue and assets. The organizations also must submit a copy of their federal tax returns, called 990s, if they are required to file such documents with the U.S. government. Nonprofits with income of \$25,000 or less and most faith-based groups are exempt from filing returns.

The information compiled by Oregon enables the state to post a Web site that allows would-be donors to check financial data and other details of a registered charity — something lacking in Hawaii.

Oregon's charitable activities section has a budget of roughly \$2 million and employs about 18 people, including two full-time attorneys, three registrars, seven

EVALUATING THE CHARITIES

Various watchdog groups, such as the Better Business Bureau, have standards by which they evaluate charities, especially those seeking donations from the public. Some of the measures:

- Charities should spend at least 65 percent of their overall expenses on program services, which are the services that directly benefit the people the charity is established to help.
- No more than 35 percent of money raised in a fundraising campaign should go to fundraising expenses.
- Charities should make available on request complete annual financial statements prepared in accordance with generally accepted accounting principles. When total annual income exceeds \$250,000, these statements should be audited.
- The financial statements should show a breakdown of expenses, including what portions go to program services, fundraising and management activities.
- An annual report with the charity's mission, summary of accomplishments, a roster of officers and board members and detailed financial information should be available upon request.
- When giving a donation, do not give cash. Make the check payable to the charity and keep records of the donation.
- Check out the charity with the Better Business Bureau or other reputable charity evaluators.

Source: BBB

investigative personnel and one auditor, according to spokeswoman Victoria Cox. About 14,000 charities are registered with the section.

By contrast, Hawaii has no oversight unit in a state with more than 5,000 charities. What oversight there is locally is handled largely by one deputy in the AG's office, with two others sometimes helping. The legal assistant to be hired will handle primarily charitable solicitation matters, which get regular attention from the office because of a Hawaii law requiring paid fundraisers to register with the state.

In the 2004 survey done by Jones, Oregon was listed as having 12 positions, two more than the average for the 30 states that responded.

SUNDAY

Charities in Hawaii have little oversight

MONDAY

The fate of legislation that would watch the industry

YESTERDAY

Mining the phone lines of charity call centers

TODAY

Models for oversight of charities

HELPFUL WEB SITES

Here are some online sites that provide guidance to people considering donating to a charity, especially one they're not familiar with:

- Better Business Bureau:**
www.bbb.org/tips/giving.asp
- American Institute of Philanthropy:**
www.charitywatch.org/tips.html
- Guidestar** (for checking a nonprofit's federal tax returns):
www.guidestar.org/
- Charity Navigator** (for checking some charity's efficiency rating):
www.charitynavigator.org/index.cfm/bay/searchadvanced
- Hawaii attorney general** (for checking registered fundraisers and how much a charity gets):
hawaii.gov/ag/charities/quicklinks/regist_pro_solict/
- Hawaii.gov/ag/charities/quicklinks/financial_reports/**

OREGON OVERSIGHT

The state's charitable activities section of the Department of Justice oversees charities in Oregon.

| PERSONNEL | 18 | REQUIREMENT |
|----------------------|-------------|---|
| BUDGET | \$2 million | Charities register once, then file annual financial reports |
| FOUNDED | 1981 | CHARITY DATABASE |
| REGISTERED CHARITIES | 14,000 | www.doj.state.or.us/cgi-bin/char/group_db_query.pl |
| YEARLY AUDITS DONE | 50 | |

The Oregon section is funded by registration fees, including those for gaming activities, paid by charities.

Cox said the section does about 50 charity audits a year, mostly triggered by complaints. The complaints often come from disgruntled ex-board members, she said. The office also handles thousands of information requests a year from the public.

When the Oregon agency discovers that a charity has strayed from its mission, the state's goal is to work with the nonprofit to fix the problem, according to Cox.

Although the department has the authority to shut down a charity and remove directors from the board, it strives for rehabilitation over aggressive punishment, keeping with the state's mission of protecting charitable assets, she said.

the Legislature to approve a new system.

One of the chief industry concerns has been that a registration requirement could prove too costly in time and money, especially for smaller charities, hurting their ability to carry out their charitable duties.

But Sohl, the nonprofit consultant, said even tiny charities benefit from Oregon's oversight.

"For the very small and unsophisticated nonprofits, we've found that the requirement to report to the Department of Justice is often helpful," she wrote in an e-mail. "It's something of a wake-up call about the need to keep basic financial records."

Reach Rob Perez at 525-8054 or rperez@honoluluadvertiser.com.

Housing

CONTINUED FROM A1

Real Estate Research & Education Center at UH.

When told of the 145 Hawaii foreclosures last month, Ordway said, "That's nothing."

Hawaii had one foreclosure (big last month for every 3,387 households). The national average was one per 510 households.

Hawaii has maintained a relatively low foreclosure rate thanks to mostly stable home prices and

the riskier loans compared with some Mainland markets.

Still, RealtyTrac data show that Hawaii's foreclosure filings have risen in seven of the first eight months of this year compared with a year earlier.

NO HOUSING GLUT

The August increase in Hawaii shows that the market is obviously tightening and people do have to be prudent in taking loans," Ordway said. But he said the monthly increase does not signal a return to a '90s-style trend.

Unlike some Mainland states that are facing a housing glut, Hawaii has not "gone overboard

the trouble with subprime lending, foreclosure filings may be headed higher. Subprime lending offers higher-rate loans taken out by people with poor credit.

"The jump in foreclosure filings this month might be the beginning of the next wave of increased foreclosure activity," RealtyTrac CEO James Saccaolo said in the report.

Nevada, where there were 6,197 August foreclosure filings, had the highest filing rate at one per 165 households. The lowest rate was in Vermont, where 11 filings equated to one per 27,940 households.

RealtyTrac's data is one of the

are facing foreclosure. The company counts a range of document filings in the foreclosure process, from default notices to auction notices and bank repossessions.

Because of the methodology, RealtyTrac's count can include more than one foreclosure filing on the same property. But the data also miss nonjudicial foreclosure notices that aren't recorded publicly, and situations in which homeowners in mortgage default are working with lenders in hopes of avoiding foreclosure action.

Reach Andrew Gomes at

HOME FORECLOSURE RATES BY STATE IN AUGUST

| U.S. TOTAL | NUMBER OF FORECLOSURES | NUMBER OF HOUSEHOLDS FOR EACH FORECLOSURE |
|--------------------|------------------------|---|
| BEST | 243,847 | 510 |
| Vermont | 11 | 27,940 |
| North Dakota | 27 | 11,276 |
| South Dakota | 32 | 10,873 |
| West Virginia | 105 | 8,307 |
| Mississippi | 164 | 7,534 |
| Hawaii (10th best) | 145 | 3,387 |
| WORST | | |
| Colorado | 6,588 | 312 |
| Ohio | 17,793 | 281 |
| Georgia | 13,341 | 271 |
| California | 37,875 | 224 |
| Nevada | 6,197 | 165 |

EXHIBIT C

Unified Registration Statement (URS) for Charitable Organizations© (v. 3.10)

Initial registration Renewal/Update

This URS covers the reporting year which ended (day/month/year) _____

Filer EIN _____

State: _____

State ID _____

1. Organization's legal name _____

If changed since prior filings, previous name used _____

All other name(s) used _____

2. (A) Street address _____

City _____ County _____

State _____ Zip Code _____

(B) Mailing address (if different) _____

City _____ County _____

State _____ Zip Code _____

3. Telephone number(s) _____ Fax number(s) _____

E-mail _____ Web site _____

4. Names, addresses (street & P.O.), telephone numbers of other offices/chapters/branches/affiliates (*attach list*)

5. Date incorporated _____ State of incorporation _____

Fiscal year end; day/month _____

6. If not incorporated, type of organization, state, and date established _____

7. Has organization or any of its officers, directors, employees or fund raisers:

A. Been enjoined or otherwise prohibited by a government agency/court from soliciting? Yes No

B. Had its registration denied or revoked? Yes No

C. Been the subject of a proceeding regarding any solicitation or registration? Yes No

D. Entered into a voluntary agreement of compliance with any government agency or in a case before a court or administrative agency? Yes No

E. Applied for registration or exemption from registration (but not yet completed or obtained)? Yes No

F. Registered with or obtained exemption from any state or agency? Yes No

G. Solicited funds in any state? Yes No

If "yes" to 7A, B, C, D, E, *attach explanation*.

If "yes" to 7F & G, *attach list* of states where registered, exempted, or where it solicited, including registering agency, dates of registration, registration numbers, any other names under which the organization was/is registered, and the dates and type (mail, telephone, door to door, special events, etc.) of the solicitation conducted.

8. Has the organization applied for or been granted IRS tax exempt status? Yes No

If yes, date of application _____ OR date of determination letter _____

If granted, exempt under 501(c) _____. Are contributions to the organization tax deductible? Yes No

9. Has tax exempt status ever been denied, revoked, or modified? Yes No

10. Indicate all methods of solicitations:

Mail Telephone Personal Contact Radio/TV Appeals
Special Events Newspaper/Magazine Ads Other(s) (specify) _____

11. List the NTEE code(s) that best describes your organization _____

12. Describe the purposes and programs of the organization and those for which funds are solicited (attach separate sheet if necessary).

13. List the names, titles, addresses, (street & P.O.), and telephone numbers of officers, directors, trustees, and the principal salaried executives of organization (attach separate sheet).

14. (A) (1) Are any of the organization's officers, directors, trustees or employees related by blood, marriage, or adoption to:
(i) any other officer, director, trustee or employee OR (ii) any officer, agent, or employee of any fundraising professional firm under contract to the organization OR (iii) any officer, agent, or employee of a supplier or vendor firm providing goods or services to the organization? Yes No

(2) Does the organization or any of its officers, directors, employees, or anyone holding a financial interest in the organization have a financial interest in a business described in (ii) or (iii) above OR serve as an officer, director, partner or employee of a business described in (ii) or (iii) above? Yes No
(If yes to any part of 14A, attach sheet which specifies the relationship and provides the names, businesses, and addresses of the related parties).

(B) Have any of the organization's officers, directors, or principal executives been convicted of a misdemeanor or felony? (If yes, attach a complete explanation.) Yes No

15. Attach separate sheet listing names and addresses (street & P.O.) for all below:

Individual(s) responsible for custody of funds. Individual(s) responsible for distribution of funds.
Individual(s) responsible for fund raising. Individual(s) responsible for custody of financial records.
Individual(s) authorized to sign checks. Bank(s) in which registrant's funds are deposited (include account number and bank phone number).

16. Name, address (street & P.O.), and telephone number of accountant/auditor.

Name _____
Address _____
City _____ State _____ Zip Code _____ Telephone _____
Method of accounting _____

17. Name, address (street & P.O.), and telephone number of person authorized to receive service of process. This is a state-specific item. See instructions.

Name _____
Address _____
City _____ State _____ Zip Code _____ Telephone _____

- 18. (A) Does the organization receive financial support from other nonprofit organizations (foundations, public charities, combined campaigns, etc.)? Yes No
 - (B) Does the organization share revenue or governance with any other non-profit organization? Yes No
 - (C) Does any other person or organization own a 10% or greater interest in your organization OR does your organization own a 10% or greater interest in any other organization? Yes No
- (If "yes" to A, B or C, *attach an explanation* including name of person or organization, address, relationship to your organization, and type of organization.)

- 19. Does the organization use volunteers to solicit directly? Yes No
- Does the organization use professionals to solicit directly? Yes No

20. If your organization contracts with or otherwise engages the services of any outside fundraising professional (such as a "professional fundraiser," "paid solicitor," "fund raising counsel," or "commercial co-venturer"), *attach list* including their names, addresses (street & P.O.), telephone numbers, and location of offices used by them to perform work on behalf of your organization. Each entry *must include* a simple statement of services provided, description of compensation arrangement, dates of contract, date of campaign/event, whether the professional solicits on your behalf, and whether the professional at any time has custody or control of donations.

21. Amount paid to PFR/PS/FRC during previous year: \$ _____

22. (A) Total contributions: \$ _____

(B) Program service expenses: \$ _____

(C) Management & general expenses: \$ _____

(D) Fundraising expenses: \$ _____

(E) Total expenses: \$ _____

(F) Fundraising expenses as a percentage of funds raised: _____ %

(G) Fundraising expenses plus management and general expenses as a percentage of funds raised: _____ %

(H) Program services as a percentage of total expenses: _____ %

Under penalty of perjury, we certify that the above information and the information contained in any attachments or supplement is true, correct, and complete.

Sworn to before me on (or signed on) _____, 20 _____

Notary public (if required)

Name (printed)

Name (printed)

Name (signature)

Name (signature)

Title (printed)

Title (printed)

Consult the state-by-state appendix to the URS to determine whether supporting documents, supplementary state forms or fees must accompany this form. Before submitting your registration, *make sure you have attached or included everything required by each state to the respective copy of the URS.*

Attachments may be prepared as one continuous document or as separate pages for each item requiring elaboration. In either case, please number the response to correspond with the URS item number.



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GOVERNOR

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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION
SENATE
TO THE ~~HOUSE~~ COMMITTEES ON
JUDICIARY AND LABOR

AND

COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE HOUSING

TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION OF 2008

Wednesday, February 13, 2008
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2968 – RELATING TO THE PROTECTION OF
CHARITABLE GIVING.**

TO THE HONORABLE BRIAN T. TANIGUCHI AND RUSSELL S. KOKUBUN, CHAIRS,
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in support of Senate Bill No. 2968, Relating to the Protection of Charitable Giving. My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection.

Senate Bill No. 2968 seeks to amend Chapter 467B of the Hawaii Revised Statutes by requiring registration with the Hawaii Attorney General of most charitable organizations before they can solicit funds.

The Department is in support of this measure because adoption of a registration requirement will promote consumer protection in two important ways.

First, it will provide information to the public. In most states, those who are solicited can contact their state charities regulator and obtain some basic information about the nonprofit and its fundraiser, such as, who they are, where they are from, how much money they took in, and how much of it made it into the coffers of the nonprofit for which they're soliciting. Adoption of this measure will enable Hawaii consumers to have access to this same type of information.

Second, the filing of registration forms and financial reports will provide a wealth of information to law enforcement. Registration will allow the Attorney General to determine who is behind a solicitation, where it is coming from, who the principals are, what other organizations are involved, and perhaps most importantly, what happens to the money that is raised.

Each year, millions of dollars are contributed to charities by Hawaii consumers. They deserve the right to know where their hard earned money is going. Adoption of this measure will give law enforcement the necessary information to tell them.

Testimony on Senate Bill No. 2968
February 13, 2008
Page 3 of 3

Thank you for this opportunity to testify on Senate Bill No. 2968. I will be happy to answer any questions that the members of the Committees may have.



Legislative Testimony

2968
SB2926, RELATING TO THE PROTECTION OF CHARITABLE GIVING
Senate Committees on Judiciary & Labor and
Commerce, Consumer Protection & Affordable Housing

Date: February 13, 2008
Room: 016

Time: 9:00am

The Office of Hawaiian Affairs supports the intent of SB 2968. We strongly believe that better oversight and monitoring of charitable organizations is necessary not only to rebuild the public trust but also to ensure the sustainability of our non-profit sector. OHA itself is constantly working to improve oversight of its grants.

In fact, today *most* states regulate fundraising. They do so through statutes -- usually called "solicitation laws" -- that are primarily concerned with the solicitation of charitable contributions from the general public. The centerpiece of most of the regulatory schemes is comprehensive reporting, by nonprofits and by the outside fundraising firms and consultants they employ.

We hope that Hawaii will join with thirty-nine (39) other states that already require registration of and reporting by charitable soliciting organizations. However, OHA does not believe that it is prudent or necessary for Hawaii to develop its own proprietary registration mechanism as stipulated in SB No. 2968 when thirty-six (36) states already subscribe to a unified registration process known as the Unified Registration Statement (URS).

The URS is part of the Standardized Reporting Project whose aim is to standardize, simplify, and economize compliance under state solicitation laws. The URS represents an effort to consolidate the information and data requirements of all states that call for registration of nonprofit organizations performing charitable solicitations within their jurisdictions. The effort is organized by the National Association of State Charities Officials and the National Association of Attorneys General. The use of such a unified process would also assist local charitable organizations as more and more of them begin to use the Internet for cross-state fundraising purposes and are increasingly faced with the prospect of having to register in multiple states.

Compliance reporting under solicitation laws is divided into two pieces: (1) *registration*, which provides an initial base of data and information about an organization's finances and governance; and (2) *annual financial reporting*, which keeps the states apprised about the organization's operations with an emphasis on fundraising results and practices. Typically, states require *both* registration (at least an initial registration) and annual financial reporting.

With thirty-nine jurisdictions regulating in this manner, there is inevitably little consistency of approach. Some states have one-time registration; others require annual renewal of registration; some will require submission of every common governance and financial document; others make do with just an IRS Form 990; and so forth. But each has its own registration form (or forms) and, until the advent of the URS, required its submission, verbatim. For now, the URS is the sole device for standardized, multi-state filing and it applies *only* to registration and registration renewal (which may be required yearly but may be distinct from annual financial reporting).



Better Business Bureau of Hawaii, Inc.
1132 Bishop Street, Suite 615
Honolulu, HI 96813
Phone: 808-536-6956
Neighbor Islands (toll-free): 1-877-222-6551
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Submitted to the Senate Committee on Judiciary and Labor

Hearing Date: February 13, 2008 at 9am

Bill Number: Senate Bill 2968 (Drafted by the AG)

Testimony of Dwight M. Kealoha, CEO, Better Business Bureau of Hawaii.

To: The Honorable Senator Brian T. Taniguchi, Chair and Members of the Committee

The Better Business Bureau of Hawaii (BBB) accredits charities to provide donors a means of assessing the trustworthiness of a charity. The BBB's intent is to promote greater self-regulation, enable charities to be accountable and demonstrate a level of transparency that benefits donors. To earn that accreditation, charities commit to and meet 20 standards in four areas.

- Governance and oversight
- Finances
- Fundraising
- Measuring Effectiveness

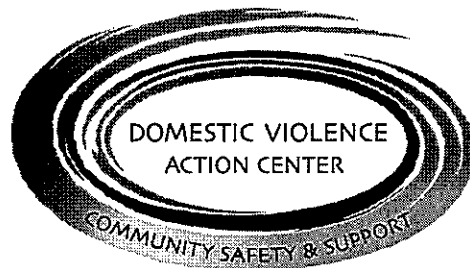
The results of the BBB's review of a charity are published on the BBB website (hawaii.bbb.org) and accessible to donors and the general public.

The BBB of Hawaii supports SB 2968 because it could provide measures that would benefit prospective donors and assist charities in their fundraising efforts. These measures include:

- Providing more information to the public regarding the charities' status and financial health. It would allow the public to make more informed decisions.

- Greater accountability of charities to the benefit of prospective donors.
- Increased transparency on the part of charities regarding fundraising. This would allow donors to have some level of knowledge about the charity. This is especially important for businesses that are approached and have few tools at their disposal to verify what the charity is about or its performance.
- Help safeguard the public from scams perpetrated by scam artists posing as charitable organizations.
- Including a provision to enforce the requirements recommended in the bill.

For these reasons the BBB supports passage of the SB 2968 (drafted by AG).



TO: Chair Brian Taniguchi
Vice Chair Clayton Hee
Members of the Committee on Judiciary and Labor

Chair Russell Kokubun
Vice Chair David Ige
Members of the Committee on Commerce, Consumer Protection and Affordable
Housing

FR: Nanci Kreidman, M.A.
Executive Director

RE: S.B. 2968

Aloha and good morning. We are submitting testimony in opposition to S.B. 2968.

This Bill adds unnecessary and cumbersome steps for agencies to follow. The fact that most organizations have contracts that do not meet their costs for providing precious services to the community, places us in the tenuous position of having to constantly work to raise additional dollars. Registering with the Attorney General in order to do this makes the job that much more onerous.

It is not clear from reading the bill what the objective of this registration before solicitation of funds is intended to achieve? It would seem the idea is to increase accountability. As we assert in our testimony for S.B. 3171, organizations most certainly have an obligation to be accountable, and are already meeting that mandate through multiple reporting requirements placed on them with contracts, grants and other awards of public or private dollars.

Thank you for inviting comment today.



February 11, 2008

TO: COMMITTEE ON JUDICIARY AND LABOR
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND
AFFORDABLE HOUSING
Senator Russell S. Kokubun, Chair
Senator David Y. Ige, Vice Chair

FROM: John Flanagan, Hawai'i Alliance of Nonprofit Organizations

RE: Testimony on **SB2968**, relating to the protection of charitable giving and
SB3171, relating to charitable trusts and nonprofit organizations

HEARING: 9 a.m., Wednesday, Feb. 13, Conference Room 016

The Hawai'i Alliance of Nonprofit Organizations is a statewide and sector-wide membership organization that unites and strengthens the nonprofit sector as a collective force to improve the quality of life in Hawai'i. HANO members include more than 280 charitable organizations of all kinds that are tax-exempt under Section 501(c)(3) of the Internal Revenue Service Code. HANO members provide valuable services to communities on every island.

HANO supports the intent of these essentially identical bills, which is to protect charitable giving. Our members have reservations, however.

Amendments: The Attorney General's office has informed us that it will suggest two specific amendments to the bills that will deal with concerns raised by HANO members:

1. Private information:

The Universal Registration Statement the bill would require includes bank account information and personal contact information for nonprofits board and staff members. HANO has requested that language be included in the bill to require such information to be confidential rather than public.

2. Reporting deadlines:

The annual reporting deadline now in the bill is four months after the end of the nonprofit's fiscal year with a three month extension for good reason. Many nonprofits realize considerable savings by having their audits and tax return preparation done during the summer after the April tax filing deadline. This avoids competition with other tax work due in April that would drive up the cost.

The IRS provides routine, six-month extensions beyond the April filing deadline and accepts audit completion as an acceptable reason for an extension. Therefore, many nonprofits file their annual Form 990s to the IRS in October for the previous tax year that ends on the previous Dec. 31.

The AG's Office said it will propose amending the bill to extend the annual reporting deadline to eight months following the close of the tax year (which would be August 31 for agencies with fiscal years that align with the calendar year) with additional extensions available if needed to complete an audit. We suggest adopting the IRS standard instead.

Additional Comments

- **Registrations and annual reports:** Many HANO member nonprofits see state registration and annual financial reports as duplicative and unnecessary. Nonprofits already provide annual reports to donors, supporters and volunteers and file financial reports to the IRS, to state and county agencies, to accrediting agencies, to private foundations and to other funders, such as United Ways and the Combined Federal Campaign.

Annual financial reports by nonprofits to the IRS are public records that can already be viewed by the public and state regulators on Guidestar.org. If additional records are needed in a case under investigation involving misuse of donor funds or criminal wrongdoing, we agree the AG's office should have subpoena powers to acquire them.

We encourage the Legislature to minimize the administrative burden on charitable organizations and to recognize that adding duplicative administrative burdens cuts into the programs and services nonprofits provide the community while increasing the pressure on fundraising. Nonprofits recognize that administrative overhead is a major concern of donors and tax payers who strongly prefer to see their money go to direct services. This bill would increase administrative overhead, requiring more paperwork and payment of auditing and registration fees.

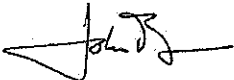
- **Should donations pay for oversight?:** HANO supports funding nonprofit oversight through an appropriation from the general fund rather than through the proposed registration fees of as much as \$750 per year. Charities agree law enforcement agencies should have the personnel and tools needed to find and deal with abuses, but disagree that the burden should be borne by the donors who support charitable

organizations and who want their contributions to go to programs that make Hawai'i a better place. HANO members question imposing fees on nonprofits that receive donations. Some tell us the proposed registration fees amount to an inappropriate tax on donors.

- **Audit requirement threshold:** While HANO members agree that auditing financial statements is a recommended best practice, they suggest the threshold for required audits be raised to at least \$1 million. The threshold now in the bill is \$500,000 in annual revenue. Audits for nonprofits with annual revenues of \$500,000 now typically cost from \$7,500 to as much as \$20,000. Audits are becoming increasingly expensive as auditing standards are becoming more rigorous.
- **Subpoenas and injunctions:** HANO supports the provisions of these bills that would give the AG the power to subpoena materials, hold hearings, apply for injunctions and grant appropriate relief to ensure that donated funds are properly used. Currently, the AG can only dissolve the organization or remove board members.
- **Charitable solicitation campaign reports:** HANO also supports the provisions of the bills that requires professional solicitors to report gross revenue from Hawai'i donors. Under the current law, it is impossible to know from the reports that are posted on the AG's website if the sums reported are just from Hawai'i donors or if they were raised nationwide.

Thank your for the opportunity to express the views of HANO members concerning **SB2968** and **SB3171**.

Sincerely,



John Flanagan
President & CEO



The Children's Alliance
OF HAWAII, INC.

LATE

Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice-Chair
Judiciary and Labor Committee

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ALFRED J. HERRERA
PRESIDENT

Wednesday, February 13, 2008

Support of S.B. 2968, Relating to Charitable Organizations

The Children's Alliance of Hawaii is a non-profit organization, incorporated in 1987. We provide supportive services to sexually abused children on Oahu and Kauai in order to assist them in the healing process and offer hope for their future. Each year we serve over 700 children. We strongly support SB No. 2968, Relating to Charitable Organizations, which would require registration of charitable organizations with the Attorney general's office, create oversight, and strengthen protections for the public against fraudulent and unscrupulous charitable solicitations and activities.

Providing service to the community is an honor and a privilege. As non-profit organizations we are duty bound to perform at the highest levels of ethical standards in order to ensure and maintain the public trust. As we strive for excellence, we know that there are others who will take advantage of the public's trust and feed upon their sympathy for personal gain. Today we have very little to protect the public from these predators. Because of the ever growing number of charitable organizations within and outside of the State, self policing is not an option.

Hawaii has one of the highest levels of per capita charitable giving. In order to maintain that high level and ensure our citizens are fully informed to confidently give, we need to have oversight of the sector and enforcement. S.B. 2968 will provide it.

We urge the committee to pass S.B. 2968. Thank you for this opportunity to testify.