



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 3171, RELATING TO CHARITABLE TRUSTS AND NONPROFIT ORGANIZATIONS.

**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

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Chairs Taniguchi and Kokubun and Members of the Committees:

This bill is similar to S.B. No. 2968, Relating to the Protection of Charitable Giving, which is being heard this morning.

However, this bill's title appears to have two subjects, "charitable trusts" and "nonprofit organizations", that may violate article III, section 14, of the Constitution of the State of Hawaii that provides in part:

Each law shall embrace but one subject, which shall be expressed in its title.

For the reasons explained in the Attorney General's testimony on S.B. No. 2968, the Attorney General strongly supports the passage of this bill with the amendments noted in Exhibit A. Because of the constitutional question about the title of this bill, we recommend that S.B. No. 2968 be passed out instead of this bill.

**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:

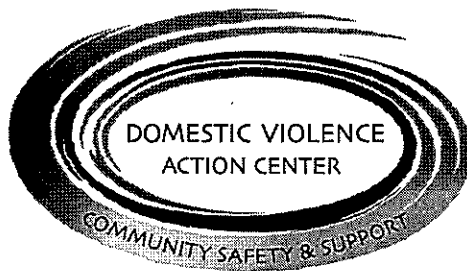
"§467B-8 Information filed to become public records.  
Statements, reports, professional fundraising counsel contracts or professional solicitor contracts, and all other documents and information required to be filed under this chapter or by the attorney general shall become government records in the 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.



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. 3171

Aloha and good morning. We submit this testimony in opposition to S.B. 3171. We are, however, in absolute support of the idea that not for profit organizations, which function as small corporations are accountable for the funds they receive, and the services they provide. Best program practices, responsible management, fiscal accountability and legal employment protocols are essential and well understood in the not for profit sector.

Every agency that receives public dollars is required to submit quarterly reports and also provides grant reports for all private dollars they receive. Tax documents are also filed with the IRS and the State of Hawaii. For us, this means we are composing and calculating reports for Hawaii State Judiciary, Department of Human Services, Department of Health, City and County of Honolulu, Indigent Legal Assistance Fund, Department of Justice, (Office of Violence Against Women), HMSA, Verizon Wireless, Hawaii Women's Legal Foundation, Alexander and Baldwin, Atherton Family Foundation, Bank of Hawaii, First Hawaiian Bank on a regular basis.

Monies that support our work are designated for direct services first. Operations costs, technology, and administration staff are secondary budget priorities. This means we have a slim team to do a great deal of important work.

We share the State's concern about questionable transactions, and excessive compensation. To develop an entire system to monitor the conduct of a few is not good public policy. The vast majority of agencies working along side us in the community are working very hard, with limited resources and the addition of new bureaucratic regulations or requirements without fully understanding the burden this places on us would be an unfortunate resolution to the problems highlighted in S.B. 3171.

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.

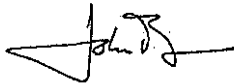
- **Should donations pay for oversight?:** HANO supports funding nonprofit oversight through an appropriation from the general fund rather than through the proposed registration fees of as much as \$750 per year. Charities agree law enforcement agencies should have the personnel and tools needed to find 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 you 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.

Senator Russell S. Kokubun, Chair  
Senator David Y. Ige, Vice Chair  
Commerce, Consumer Protection, and Affordable Housing Committee

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- VIRGINIA WEINMAN
- A. JAMES WRISTON, JR.
- ALDEN YAMANE

Wednesday, February 13, 2008

Support of S.B. 3171, 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. 3171, 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. 3171 will provide it.

We urge the committee to pass S.B. 3171. Thank you for this opportunity to testify.

ALFRED J. HERRERA  
PRESIDENT

**LATE****testimony**

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**From:** Shannon Weatherspoon [shannon@arcofmaui.org]  
**Sent:** Wednesday, February 13, 2008 9:04 AM  
**To:** testimony  
**Subject:** FW: 3171 JDL/ CPH WAM

Upon review several issues arise which requires a careful scrutiny to avoid duplications of effort through expansion of bureaucracy.

There is little question about the need for careful observation of non-profit as we would expect it of State Government.

- Our agency has independent audit conducted annually.
- 990's are on file for public knowledge.  
Why duplicate this effort?
- How much funds are expected the initial year coupled with anticipated increases every year thereafter?
- Will AG staff continue to expand to meet this requirement?
- How more successful will the AG be able to find out above inequities verses a possible witch hunt?
- Does AG staff have fiscal expertise?

The intent seems reasonable but at what cost? It could be viewed as a taxation on non-profits since compliance with federal is ongoing.

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