



February 19, 2008

TO: COMMITTEE ON WAYS AND MEANS
Senator Rosalyn Baker, Chair
Senator Shan S. Tsutsui, Vice Chair

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

RE: Testimony on **SB3171 SD1**, relating to charitable trusts and nonprofit organizations

HEARING: 9:30 a.m., Thursday, Feb. 21, Conference Room 211

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 **SB3171 SD1**, which is to protect charitable giving. Our members have expressed reservations, however.

Duplicative reporting: 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.

HANO members caution that the few examples of abuse of donor funds highlighted by the media do not establish that there is a widespread problem requiring heavy-handed, time consuming and expensive oversight that would penalize thousands of organizations that are already doing their best to be accountable to donors and funders.

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 charitable programs and services. Some HANO members say the proposed registration fees amount to an inappropriate tax on donors.

HANO especially supports these provisions:

1. **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 an organization or remove board members.
2. **Charitable solicitation campaign reports:** HANO also supports the provisions of the bill 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 nationally.

HANO supports these amendments: Since the language of this bill was first proposed by the Attorney General's office, a number of amendments have been introduced that address concerns raised by HANO members:

1. **Confidential information:**

The Universal Registration Statement the bill would require includes bank account information and personal contact information for nonprofits board and staff members. HANO requested language, now in the bill, that requires such information to be kept confidential.

2. Reporting deadlines:

The annual financial reporting deadline now in the bill is eight months after the end of the nonprofit's fiscal year with a three month extension for good cause. Although these deadlines may seem loose, they reflect suggestions from HANO members who say many nonprofits realize considerable savings by having 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 Dec. 31.

The bill would now require filing audited financial statements by August and allow good-cause extensions through November if, for example, it took that long to complete an audit. HANO supports these deadlines.

3. Effective dates:

The AG's office has informed us it will ask for an amendment to require out-of-state nonprofits that come to Hawai'i to raise money to register immediately while providing time after the law takes effect for Hawai'i nonprofits that are already receiving donations to register. HANO suggests that the deadline for Hawai'i charities to register be Dec. 31, 2008, since it will take some time to put the registration system in place, to recruit new oversight staff, to inform Hawai'i nonprofits of the registration requirement and for them to become familiar with the Universal Registration Statement and resolve questions about the form.

4. Audit requirement threshold:

While HANO members agree that having financial statements audited is a recommended best practice, they suggested the threshold for required audits be at least \$1 million, which is the threshold now in the bill.

Audits for even small nonprofits now typically cost from \$7,500 to as much as \$20,000. Audits are becoming increasingly expensive as auditing standards are becoming more rigorous. While they are recommended for any organization that can afford them, an audit requirement represents a substantial redirection of resources.

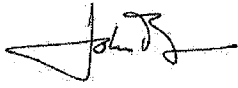
5. Lower registration fees:

The AG originally proposed fees that would range from \$10 to \$750 per year based on a sliding scale that would reach the \$750 maximum for organizations

with annual revenues of \$2 million. The sliding scale in the current version of the bill also caps at \$750, but for organizations with \$5 million in revenues or more. As noted above, HANO favors minimizing the financial and administrative burden this bill imposes on Hawai'i charities. Since fees redirect tax-deductible gifts to the state, they can be viewed as a tax on tax-exempt organizations. HANO supports an appropriation to meet the AG's staffing needs rather than fees assessed on charities that rely on donations.

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

Sincerely,

A handwritten signature in black ink, appearing to read "John Flanagan", with a long horizontal stroke extending to the right.

John Flanagan
President & CEO



The Children's Alliance
OF HAWAII, INC.

TO: Senator Rosalyn H. Baker, Chair
Senator Shan S. Tsutsui, Vice-Chair
Senate Committee on Ways and Means

FROM: Alfred Herrera, President
The Children's Alliance of Hawaii, Inc.
(808) 599-2955 x 215

HEARING: 9:30am, Thursday, February 21, 2008, Room 211

RE: Support of S.B. 3171 S.D.1 Relating to Charitable Trusts and Nonprofit Organizations

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PRESIDENT

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 S.B. 3171 S.D.1, Relating to Charitable Trusts and Nonprofit Organizations. This measure will protect charitable giving by providing oversight to charitable organizations, one of the State's largest business sectors. It creates a system that will help ensure nonprofit organizations fulfill their duty to operate at the highest levels of ethical standards in order to keep and maintain the public's trust and continued support.

We agree with the measure as amended. It creates a mechanism for oversight and enforcement that relies upon the sector for direct funding, not State general funds. The sliding fee proposed is reasonable and does not create an undue burden on the organization or its donors. It is similar, if not less expensive, than some of the sliding "membership fees" required by professional association organizations. Knowing that there are costs of doing business, we believe the fee is well spent because it will help the greater community and prospective donors have greater confidence in Hawaii's non-profit organizations.

The registration process proposed within the measure utilizes a standardized form that is easily completed. Registering should only be a matter of minutes.

Upcoming changes within the IRS will soon reduce the number of 990 tax forms for non-profit organizations available for public viewing on Guidestar. These changes will make it even harder for the public to obtain important information on non-profit organizations

The time is truly right for S.B. 3171 SD1. We urge the committee to pass S.B. 3171 SD1.

Thank you for this opportunity to testify.