

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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 3171, S.D. 2, RELATING TO CHARITABLE TRUSTS AND NONPROFIT ORGANIZATIONS.

**BEFORE THE:**

HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE AND ON JUDICIARY.

**DATE:** Thursday, March 13, 2008 **TIME:** 2:00 PM

**LOCATION:** State Capitol, Room 325

*Deliver to Room 315, 5 copies*

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

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Chair Herkes and Members of the Committee:

The Department of the Attorney General supports this bill, with the five amendments listed below.

The purpose of this bill is to re-enact a registration law for charities that solicit funds in Hawaii, and to strengthen Hawaii's charitable solicitation law. This bill is similar to H.B. No. 3046, which received favorable testimony from the Better Business Bureau of Hawaii and other nonprofit organizations, as well as the Editorial Board of the Honolulu Advertiser.<sup>1</sup>

We request the following amendments:

1. We request that the last sentence of proposed subsection (a) of section 467B-A, Hawaii Revised Statutes, lines 9 through 13, page 4, be revised to read:

"A consolidated application for registration may, at the option of the charitable organization, be submitted by a parent organization for itself and any or all of its related foundations, supporting organizations, chapters, branches, or affiliates in this State."

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<sup>1</sup>"State Law is Need to Regulate Charities," Honolulu Advertiser (Sept. 18, 2007) ("Legislators must provide safeguards so that residents can rely on laws, not blind faith, when donating to their favorite charities").

This will facilitate consolidated registration by national organizations or statewide organizations with Hawaii chapters or affiliates and relieve those organizations from the burden of duplicative registrations.

2. We request that a new definition be added to section 3 of the bill that reads as follows:

"Parent organization" means that part of a charitable organization that coordinates, supervises, or exercises control over policy, fund raising, or expenditures, or assists or advises one or more related foundations, supporting organizations, chapters, branches, or affiliates of such organization in this State."

This amendment relates to the first amendment noted above.

3. We recommend that the penalty imposed by subsection (e) of proposed section 467B-C, Hawaii Revised Statutes, be capped at \$1,000 rather than \$20,000. There is a similar penalty cap in section 467B-9.7(b), Hawaii Revised Statutes.

4. We recommend that section 13 be amended to state that the provisions of section 2 of the bill will become effective on November 15, 2008, to allow sufficient time for currently soliciting charities to register with the Attorney General.

5. We recommend that the gross income threshold, on page 6, line 2, for the required filing of audited financial statements be lowered to \$500,000 from the present \$1,000,000. As currently drafted, less than ten percent of Hawaii charities would be required to prepare an audited financial statement. The audit threshold in most other states averages from \$150,000 to approximately \$350,000.

#### 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 B.

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 \$1,000,000 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.

Although we pointed out in testimony to the Senate Committee on Labor that the title of this bill could be challenged as expressing two subjects, the Senate Committee decided to pass out this bill instead of another bill that was also being heard. Section 14 of article III of the Constitution of the State of Hawaii, states in part:

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

However, this requirement has been liberally construed by the Hawaii Supreme Court. See Schwab v. Ariyoshi, 58 Haw. 25 (1977). In the Schwab case, the Court stated:

It is sufficient if the title of [a law]  
fairly indicates to the ordinary mind the  
general subject of the act, is comprehensive



enough to reasonably cover all its provisions, and is not calculated to mislead;

We believe that the title of this bill, "Relating to Charitable Trusts and Nonprofit Organizations," may fairly be viewed as a bill that contains provisions that generally related to charitable organizations (charitable trusts, public benefit corporations and foundations) and satisfies the liberal test established by the Hawaii courts.

Why Hawaii Needs a Charitable Solicitation Registration Law

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 in the Honolulu Advertiser in September 2008, a copy of which is attached to this testimony as Exhibit A, 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 a 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.<sup>1</sup>

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.

We respectfully request that this bill be passed with the five amendments noted above.

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<sup>1</sup> See "Experts Advice: Register Charities" Honolulu Advertiser November 2, 2007

**EXHIBIT A**



# The Honolulu Advertiser

September 16, 2007

HAWAII'S NEWSPAPER

HOME FINAL  
\$1.75 on O'ahu  
\$3.00 on Neighbor Islands

BREAKING NEWS 24/7 AT HONOLULUADVERTISER.COM

## 990 Return of Organization **UNGUARDED GIVING**

**TODAY**  
Charities in Isles get scant state scrutiny

**TOMORROW**  
The fate of legislation

**TUESDAY**  
Mining the phone lines of charity call centers

**WEDNESDAY**  
Models for oversight of charities

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

**How are your donations used?**  
Ways to find out

Do you know how much of your charitable donation goes to the actual good deeds the charity is supposed to perform? Or how much the top executive of your favorite charity is paid? Or what that charity spends on overhead? Find out through our custom-built searchable database of more than 650 Hawai'i charities, with information gleaned from the charities' tax forms through [www.guidestar.org](http://www.guidestar.org).

[HonoluluAdvertiser.com](http://HonoluluAdvertiser.com)

**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](http://HONOLULUADVERTISER.COM)

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

For three consecutive years, starting in 2002, the Waipahu nonprofit paid one of its top executives more than \$250,000 annually, far more than what officials earn at education institutions much larger in size. At KCAA Preschools of Hawaii, a nonprofit that had double the enrollment and revenue as Alphabetland during that same period, its top executive earned less than \$75,000 a year.

Over roughly that same period, Alphabetland also loaned more than \$100,000 to another officer 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 loaning money to their officers and directors. The husband served in both roles.

The wife's pay, which raised questions of excessive compensation, and the husband's loan were duly noted on Alphabetland's federal tax returns from 2001 to 2004.

But because Hawaii has no registration system, which usually includes the filing of a charity's tax return, the Alphabetland 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 Arizala, about \$1 million from 2000 to 2003 (Gary Arizala died in 2004) and that the nonprofit was leasing two luxury cars, a Jaguar and Volvo, for \$1,200 a month.

They also could see from the tax returns that the Arizalas were listed as Alphabetland's only board members during the period the husband was borrowing money and the wife's annual salary peaked at \$264,000. 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.

Alphabetland declined comment except to say it was in discussions with the AG's office, has 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 June statement.

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

#### CRIMES AND MISDEEDS

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 property that elderly donors had intended



ANDREW SHIMAMURA / The Honolulu Advertiser

Alphabetland 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.

#### AT THE BOTTOM

In a December 2004 survey of 30 states, Hawaii ranked last in number of state positions budgeted for charity oversight and enforcement. New York topped the list with 85 positions.

THE BOTTOM STATES	POSITIONS
Hawaii	0
Wisconsin	3.35
New Mexico	3
Indiana	2.88
Kentucky	2.3
Colorado	2
Alaska	2
Arizona	1.5
Delaware	1
New Hampshire	5

SOURCE: HAWAII CHARITABLE OVERSIGHT AND ENFORCEMENT ASSOCIATION OF STATE CHARITY OFFICIALS

by the organization even though he had a previous conviction in Colorado for bilking an elderly couple. The man pleaded guilty to theft, forgery and other charges last week in connection with the Salvation Army case.

• A soccer league volunteer was sentenced to five years of probation last year for stealing more than \$40,000 from her Oahu nonprofit group.

• A former politician was accused in 2005 of improperly transferring \$130,000 in campaign funds to a Waipahu charity he headed. The matter was referred to the AG's office for a criminal investigation.

Those cases and other publicized ones delivered some damaging public-relations blows to Hawaii's industry, raising questions about whether the state and charities themselves have sufficient safeguards in place to protect

exempt status to charities, but it does so few audits — far less than 1 percent of all nonprofits nationally — that oversight has fallen largely to the states. The Internal Revenue Service did not have statistics on audits of Hawaii nonprofits.

The quality of charity monitoring varies considerably from state to state, with some jurisdictions devoting entire divisions to it. Pennsylvania, for instance, has about 30 people, including attorneys and support staff, in its charitable trusts and organizations section. Oregon has nearly 20.

In Hawaii, the AG's office, which is responsible for charity oversight, doesn't have even one full-time deputy assigned exclusively to that task.

That dearth of resources was reflected in a December 2004 survey by the National Association of State Charity Officials. Of the 30 states that responded, every one had more budgeted positions — from clerks to attorneys — dedicated to charity oversight and enforcement than Hawaii, which at the time had none. Today, it has one.

"Oversight (around the country) generally is pretty lax," said Dennis Morris, a Marshall University journalism professor who specializes in nonprofit issues. "But at least some oversight is better than none."

Proponents say 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 compensation deals, and answer questions from the public.

Having regulators review annual filings also can serve as a deterrent to abuse and is designed to give donors confidence that someone independent of the organization is watching to pro-

tections to protect the trust of donors, the industry is worrisome.

"I can't think of another state that has less of a commitment to regulating charities and protecting the interests of donors," said Trent Stamp, president of Charity Navigator, a watchdog group based in New Jersey.

"It really sounds like a wild west atmosphere," said Daniel Borochoff, president of the American Institute of Philanthropy in Chicago.

#### IN-HOUSE WATCHDOGS

Industry officials, however, say Hawaii nonprofits generally have done a good job of protecting donor interests, spending money efficiently and keeping misconduct at bay.

"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 outside oversight, many charities hire outside accountants to review their books, and nonprofits that receive funding from

government agencies and private foundations have to file reports accounting for how those dollars are spent, according to charity executives.

"The nonprofit sector here is subject to much greater scrutiny than any (government) agency," said Nanci Kreidman, executive director of the Domestic Violence Clearinghouse.

Adding to that dynamic, the tight-knit nature of the industry in an island community means "word-of-mouth"

#### ALPHABETLAND PRESCHOOL & KINDERGARTEN

2006 DATA

Enrollment (monthly average)	300
Revenue	\$1.9M
Expenses	\$1.9M
Excess	-\$42
Assets	\$836
President	Amy Arizala
Salary	\$108

SOURCE: FEDERAL TAX RETURNS

lengths to protect the trust of donors, the industry is worrisome.

"Reputation is what said Kelvin Taketa, president of Hawaii Community Foundation. Taketa and other executives at the AG's office do enough funding to provide under the existing system any expanded on clearly loud Hugh Jones, who provides the bull

fight, including main office's Web site on charity Jones, however, also I charity-related duties. responsibility of the tax department of Taxable "Hugh does a terrific said of Jones' nonprofit frankly we need four or one."

Guarding against abuse the industry because of public support, and do reluctant to give if they. their money will be used

The stakes are constant Hawaii residents give millions of dollars in support of public causes. In 2001, year for which statistics are available, local residents donated \$430 million in goods Hawaii's and national according to a 2002 study by the Hawaii Community Foundation.

The funds that go to it help support a six the state economy. I charities control more in assets. Another 300 families to help fund, control \$1.2 billion, these more generate more it



# Charities

CONTINUED FROM A6

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

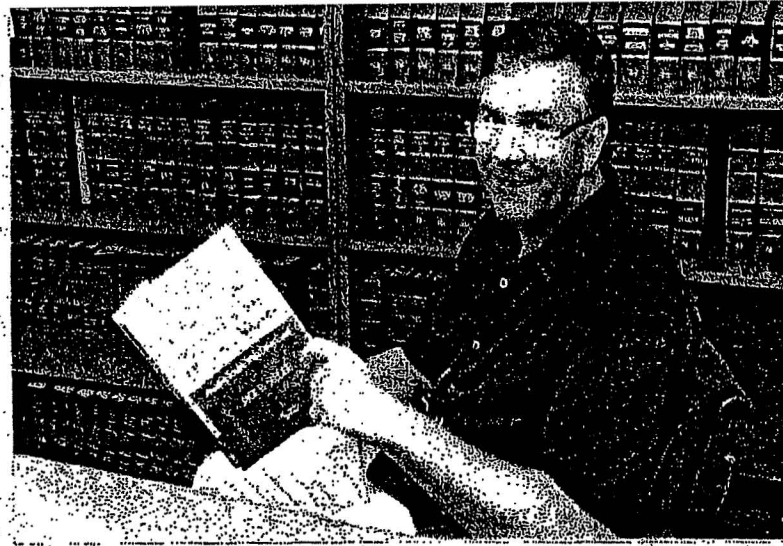
That was among the arguments the AG's office made several years ago when it attempted to get a registration system resurrected in Hawaii's. Registrations were required here until legislators repealed the law in the mid-'90s. But lawmakers were unwilling to support a new statute that the AG's office proposed in 2001 and 2002.

While Hawaii has a strong law regulating paid solicitors 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 AG's office 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. Would-be donors, for example, can't 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.give.org](http://www.give.org)) or Charity Navigator ([www.charitynavigator.org](http://www.charitynavigator.org)), provide online evaluations of certain charities, but the offerings tend to be limited or the participation of charities is voluntary.

A charity's federal tax returns, called 990s, also are available online ([www.guidestar.org](http://www.guidestar.org)), but regulators and others often lament that the re-



BRUCE ASATO | The Honolulu Advertiser

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

turns can be untimely, inaccurate or incomplete. Nonprofits with income of \$25,000 or less and most faith-based groups are not required to file 990s.

## TAX DEDUCTIONS AT RISK

Without a registration system, local donors who contributed more than \$74,000 in 2006 and early 2007 to the 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-incorporated until January 2007.

That meant the donors' contributions during that period were not tax-deductible, according to the AG'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 AG's office, and that information likely would have been added to what was publicly available about the charity.

The Hawaii AG's 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 solicitors fall under that law.

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

In providing receipts to the donors, Hawaii Promotions included its 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.

The foundation was involuntarily dissolved because of a technicality that Kai wasn't even aware of until the AG's

"Hugh does a terrific job. But frankly we need four Hughs, not just one."

KELVIN TAKETA | President, Hawaii Community Foundation, speaking of deputy attorney general Hugh Jones, who provides oversight of Hawaii's 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 contention. Kai has done that.

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

The need to oversee charities is not just limited to the smaller, less obscure ones, analysts say.

High-profile, more mainstream organizations also can slip up, sometimes unknowingly.

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

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

"This was done to comply 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 AG's office wasn't aware of it until last week — when The Advertiser called to inquire about it.

Reach Rob Perez at 525-8054 or [rperez@hawaiiadvertiser.com](mailto:rperez@hawaiiadvertiser.com)



# The Honolulu Adv

MONDAY | September 17, 2007

HAWAII'S NEWSPAPER

BREAKING NEWS 24/7 AT HONOLULUADVERTISER.COM

## 990 Returns UNGUARDED GIVING

### WHO'S REGULATING HAWAII'S CHARITIES?

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Find out through our custom-built searchable database of more than 650 Hawaii charities, with information gleaned from the charities' tax forms through [www.guidestar.com](http://www.guidestar.com).

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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



# INGUARDED GIVING

990 Return of Organ...  
 HO'S REGULATING HAWAII'S CHARITIES? A HONOLULU ADVERTISER SPECIAL REPORT

**SUNDAY** Charities in Hawai'i 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

INUED FROM A1

who in the community, corporate heads. Civic leadership lobbyists. Government officials. Union executives. State legislators sit on the state boards. If a particular bill generates opposition in the non-community, the chances are slim, according to the industry. There are some very influential important business people on those boards, and they're saying more regulation is good," said Jonathan Won, who lobbied at the Legislature various nonprofit groups in the past 30 years. "The whole of regulation — people just like it, especially business people."

reasons nonprofit representatives cited back then to lobby against the bills are similar to they cite today in expressions about a registration system. Eleven states do not require charities to register: Hawaii, Nevada, Idaho, South Dakota, Indiana, Texas, Iowa, Vermont, Montana, Wyoming, Nebraska. Source: Multi-state Filings 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."

**ING A BALANCE** Current and former legislators are oversight of the industry taken hold at the Legislature partly because of a lack of outcry for change. But current lawmakers say they're a dialogue on the issue. Rosalyn Baker, the Seniors and Means chairwoman, said there is a need for non-board members to better understand their fiduciary duty

### A GENEROUS LOT

Hawai'i 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 Hawai'i Community Foundation:

- 92% OF ALL HOUSEHOLDS GAVE, COMPARED WITH 88% 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 \$894 IN 1998
- Nearly 70% of respondents gave because they believed the organization was best suited for the job; 88% 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.hawaiicommunityfoundation.org/doc\\_bin/publications/HCF\\_GivingStudy2002.pdf](http://www.hawaiicommunityfoundation.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 Filings Project, National Association of State Charity Officials.

state more information about charities as long as fulfilling that requirement doesn't become a bureaucratic burden, interfering with their missions.

Kelvin Taketa, president of the Hawai'i 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 Hawai'i 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

Hawai'i has more than 5,500 charitable organizations, with assets of nearly \$14 billion.

<b>5,002</b> Public charities	<b>\$5.6 billion</b> Total revenue reported on 990s	<b>1 per 255 residents</b> Public charities per capita, the 10th highest among 50 states
<b>559</b> Private foundations	<b>\$13.98 billion</b> Total assets reported on 990s	
<b>2,164</b> Number of organizations filing Form 990 tax return*		*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 statements, 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 Hawai'i, 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

resident John O'Keefe, who personally donated more than \$600,000 to it in 2001 and 2003, the returns show. Donations like that normally entitle the contributor to significant tax deductions.

The Catalyst's returns, which Jones said were incomplete and inaccurate, attracted the attention of state and federal regulators. One area of focus was the lack of grants. Under The Catalyst's tax-exempt status, the organization is required to give the equivalent of 5 percent of its assets each year to charities. But it gave no grants from 2001 through 2004 and issued a \$5,000 grant in 2005 to a homeless shelter, the returns show.

Authorities also questioned the thousands of dollars in rent that the foundation paid for the Ilkai condo where O'Keefe was living, according to the tax returns and Jones. The organization classified the rent as an expense when it should have been listed as compensation to a director, Jones said.

O'Keefe said he spent hours answering questions from state and federal authorities and eventually addressed all their concerns. He didn't elaborate and later told The Advertiser not to call him again.

An IRS spokeswoman declined comment. Jones said the state required the foundation to take significant actions, including correcting its returns, seeking an IRS ruling on its exempt status and paying for the state's cost of its investigation.

The Advertiser's review of tax returns for dozens of randomly selected Hawai'i charities also turned up many red flags, which raise questions about a charity's operations but don't necessarily indicate something is wrong. The Center for A Sustainable

Future, for instance, paid its president \$116,000 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 Hawai'i 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 \$48,000 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 Hawai'i 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](mailto:rperez@honoluluadvertiser.com).

What are your thoughts on the state's oversight of its charities? Join the conversation at [HONOLULUADVERTISER.COM](http://HONOLULUADVERTISER.COM)

For previous articles in this series, go to [HONOLULUADVERTISER.COM/CHARITIES](http://HONOLULUADVERTISER.COM/CHARITIES)

990 Return of Organization  
under section 501(c), 527, or 4947;  
Benefit 3

**UNGUARDED GIVING**

**WHO'S REGULATING HAWAII'S CHARITIES?**

# State to unleash first nonprofit watchdog

Oregon's registration system also could help Hawai'i 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 Hawai'i 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 Hawai'i 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, Hawai'i had none.

**SEE CHARITY, A2**

## How are your donations used? Where to find out

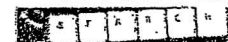
Do you know how much of your donation goes to the good deeds a charity is supposed to perform?

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

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

[HONOLULUADVERTISER.COM/FYI](http://HONOLULUADVERTISER.COM/FYI)

**FYI ADVERTISER**



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# 990 GUARDED GIVING

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

**SUNDAY**

Charities in Hawaii have little oversight

**MONDAY**

The fate of legislation that would watch the industry

**YESTERDAY**

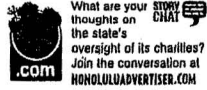
Mirroring the phone lines of charity call centers

**TODAY**

Models for oversight of charities

### Charity

CONTINUED FROM A1



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 50 states that responded.

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.

### 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.give.org/tips/giving.asp](http://www.give.org/tips/giving.asp)
- American Institute of Philanthropy:**  
[www.charitywatch.org/tips.html](http://www.charitywatch.org/tips.html)
- GuideStar** (for checking a nonprofit's federal tax returns):  
[www.guidestar.org/](http://www.guidestar.org/)
- Charity Navigator** (for checking some charity's efficiency rating):  
[www.charitynavigator.org/index.cfm/bay/search.advanced](http://www.charitynavigator.org/index.cfm/bay/search.advanced)
- Hawaii attorney general** (for checking registered fundraisers and how much a charity gets):  
[hawaii.gov/ag/charities/quicklinks/regist\\_pro\\_solici/](http://hawaii.gov/ag/charities/quicklinks/regist_pro_solici/)  
[hawaii.gov/ag/charities/quicklinks/financial\\_reports/](http://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 <a href="http://www.doj.state.or.us/cgi-bin/char/group_db_query.pl">www.doj.state.or.us/cgi-bin/char/group_db_query.pl</a>
REGISTERED CHARITIES	14,000	
YEARLY AUDITS DONE	50	

### LOW TOLERANCE

With professional fundraisers, however, the state is very aggressive if the companies mislead donors or violate other laws, Cox said. The state, for instance, will threaten to sue if the fundraiser misrepresents information, she said.

Oregon has provided independent oversight of the industry for years. It formed the activities section in 1981.

Hawaii used to have a registration requirement for charities, but that law was repealed in the mid-1990s, and the industry helped thwart efforts in 2001 and 2002 by the AG's office to get

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 Soh, 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](mailto: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 filing 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 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 foreclosure trouble with subprime lending, foreclosure filings may be headed higher. Subprime lending is 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 Saccacio 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.

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.

### HOME FORECLOSURE RATES BY STATE IN AUGUST

	NUMBER OF FORECLOSURES	NUMBER OF HOUSEHOLDS FOR EACH FORECLOSURE
U.S. TOTAL	243,947	510
BEST		
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	19,931	271
California	57,275	224

**EXHIBIT B**

**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.**





The Children's Alliance  
OF HAWAII, INC.

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ALLEN KUBOTA  
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VIRGINIA WEINMAN  
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ALDEN YAMANE

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ALFRED J. HERRERA  
PRESIDENT

TO: Representative Robert N. Herkes, Chair  
Representative Angus L.K. McKelvey, Vice Chair  
Committee on Consumer Protection & Commerce

Representative Tommy Waters, Chair  
Representative Blake K. Oshiro, Vice Chair  
Committee on Judiciary

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

HEARING: 2:00 pm, Thursday, March 13, 2008, Room 325

RE: Support of S.B. 3171 S.D.2 Relating to Charitable Organizations

Support of S.B. 3171 SD2, 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 SD2, 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. This measure will provide protection.

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 SD2 will provide it.

We respectfully urge the committee to pass S.B. 3171 SD2.

*Thank you for this opportunity to testify.*



TO: Robert N. Herkes, Chair  
Angus L.K. McKelvey, Vice Chair  
Members of the Committee on Consumer Protection and Commerce

Tommy Waters, Chair  
Blake Oshiro, Vice Chair  
Members of the Committee on Judiciary

FR: Nanci Kreidman, M.A.  
Executive Director

RE: S.B. 3171, S.D. 2

Aloha and good morning. We submit this testimony in opposition to S.B. 3171, S.D. 2. 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, S.D. 2.

Thank you for inviting comment today.



March 12, 2008

**TO:** CONSUMER PROTECTION & COMMERCE  
and JUDICIARY COMMITTEES

Representatives Robert Herkes and Tommy Waters, Chairs  
Representatives Angus McKelvey and Blake Oshiro, Vice Chairs

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

**RE:** Testimony on **SB3171 SD2**, relating to charitable trusts and nonprofit organizations

**HEARING:** 2 p.m., Thursday, March 13, Conference Room 325

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 SD2**, which is to protect charitable giving:

- We support the Attorney General's Office in its efforts to **insure donor confidence**. HANO is working toward the same goal, providing training and technical assistance to assist nonprofit organizations in Hawai'i in fulfilling their missions through proper financial management, informed leadership, regulatory compliance and best practices in board governance.
- HANO recognizes that the AG needs the **added enforcement powers** included in this bill to do its job, such as injunctions, subpoenas and a compulsory hearing process. We applaud the AG's efforts to provide information to donors about professional fundraising campaigns and the net proceeds that charities receive. We also understand that adequate oversight requires staff and equipment.

- We appreciate the changes in the bill since its introduction in the Senate that the AG has agreed to, such as **extended filing deadlines** that allow nonprofits to have their books audited in summer months rather than before the IRS' April tax deadlines when the work is more expensive.
- We applaud the AG also for agreeing to a **deadline to register** of Dec. 31, 2008, for nonprofits already doing business in Hawai'i.
- We support the amendment that makes **sensitive registration information confidential**, such as home addresses of board members and bank account information.
- Nonprofits also appreciate the Senate's raising to \$1 million the annual revenue threshold for organizations that must submit **annual audits**. While HANO recommends that all nonprofits have annual audits or CPA reviews, as appropriate, the tightening of audit standards, recent changes in the IRS Form 990 information return and the escalating cost of audits have increased the burden and administrative overhead of small nonprofits. We feel this threshold is appropriate.

Our members have expressed reservations, however:

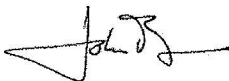
- Recent awards of state contracts to for-profit out-of-state companies that had formerly been awarded to Hawai'i nonprofit organizations have raised concerns about **fair and equal treatment**. Requiring Hawai'i nonprofits to file detailed financial information that is public record gives for-profit competitors an unfair advantage. If nonprofit organizations are required to register and file annual financial reports, shouldn't for-profit companies that compete for state contracts also meet these requirements?
- The bill includes annual fees ranging from \$10 to \$750 per year for organizations that receive contributions. Some HANO members say the proposed registration fees amount to an **inappropriate tax on donors**. 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. HANO supports funding nonprofit oversight through an appropriation from the general fund rather than through the proposed registration fees.
- 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 anyone 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 reduces resources available for 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 taxpayers 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.

Thank you for the opportunity to express the views of HANO members concerning **SB3171 SD2**.

Sincerely,

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

John Flanagan  
President & CEO

Testimony of The Nature Conservancy of Hawai'i  
Supporting S.B. 3171 SD 2 Relating to Charitable Trusts and Nonprofit Organizations  
House Committee on Consumer Protection & Commerce  
House Committee on Judiciary  
Thursday, March 13, 2008, 2:00 PM, Room 325

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*The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.*

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The Nature Conservancy of Hawai'i supports S.B. 3171 SD 2.

As important to The Nature Conservancy's efforts to protect plants, animals and ecosystems is how we conduct ourselves in our drive lasting conservation results. At the very top of the list of values held and required of all who represent The Nature Conservancy is integrity beyond reproach. We will meet the highest ethical and professional standards in all of our organizational endeavors and, in doing so, we demand of ourselves that we:

- Are honest at all times;
- Accountable to each other, our mission, our donors, members, partners, and the public; and
- Earn trust by building relationships, being competent, and following through on all commitments.

The Conservancy appreciates the efforts of the Attorney General's Office and the Legislature to craft legislation that will serve to provide additional knowledge and transparency to the people of Hawaii regarding the charities they so generously support. We also wish to thank the AG's office for its work to balance the need for relevant information from Hawai'i nonprofits while trying to achieve a system that does not impose undue financial or other hardships on charities' missions. We look forward to continuing to help ensure the public's confidence in Hawaii's nonprofit sector.

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