

SB2669

SD1



**COMMENTS OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2669, S.D. 1, RELATING TO THE SOLICITATION OF FUNDS FROM THE PUBLIC.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

DATE: Friday, February 19, 2010 **TIME:** 11:00 a.m.

LOCATION: State Capitol, Room 016

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

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General strongly supports this bill. More than 1,200 charitable organizations are registered with the Department as required by chapter 467B, Hawaii Revised Statutes. The purpose of this bill is to strengthen and clarify provisions of the registration law to allow for more efficient enforcement of the law and facilitate compliance by the charitable sector.

A. Service of Process on Out of State Charitable Organizations

Approximately three-fourths of the registered charitable organizations soliciting contributions in Hawaii are domiciled on the mainland. This bill designates the Attorney General as the agent for service of process for non-Hawaii domiciled charitable organizations, professional solicitors, and fundraising counsels, to facilitate the service of subpoenas and other court process. This is a common feature of many other states' registration laws. After the Attorney General accepts service of process for a non-Hawaii domiciled charitable organization, professional solicitor, or fundraising counsel, that process will be sent to the charitable organization, professional solicitor, or fundraising counsel by registered

mail, return receipt requested, at the last known address on file with the Department.

B. Substituted Service on Hawaii Domiciled Charitable Organizations

For similar reasons, this bill allows the Attorney General to serve process on Hawaii-domiciled charitable organizations by substituted service if personal service cannot be accomplished in Hawaii. Substituted service would include registered or certified mail, or such other method as a court would allow, such as service by publication.

C. Clarification of Annual Financial Reports by Registered Charitable Organizations

Hawaii's charitable solicitation law requires each registered charitable organization to annually submit a financial report, and in some cases, an audited financial statement. The present law does not state explicitly what must be included in the financial report. To provide greater clarity and simplify compliance, this bill designates registered charities' Form 990, 990EZ, or 990PF - which charities must already prepare and submit to the IRS every year - as the annual financial report. The bill also clarifies the deadline for the filing of annual financial reports by linking that deadline to the deadline for the filing of Form 990, 990EZ, or 990PF: the fifteenth day of the fifth month following the close of the taxable year. The bill requires charities that have obtained an extension of time to file their Form 990, 990EZ, or 990PF to submit a copy of the IRS-approved extension request to the Department of the Attorney General.

The bill clarifies that audited financial statements submitted to the Department of the Attorney General must be prepared according to generally accepted accounting principles.

D. Enforcement Related Amendments

This bill amends section 467B-6.5, Hawaii Revised Statutes, to also impose the existing fine or late fee for reports or registration statements, on the annual fees assessed to all charitable organizations. Presently, there is no fine for charities that fail to timely pay their annual fee, which are due when charities submit their financial report.

The bill amends section 467B-9.3, Hawaii Revised Statutes, to allow the Attorney General to accept an "Assurance of Discontinuance." This is a common feature of many charitable registration and consumer protection laws, including section 487-12, Hawaii Revised Statutes. As part of any such assurance, the charity could be required to pay the costs of the Attorney General's investigation, if any.

E. Clarification of Exemptions from Registration Requirement

This bill amends section 467B-11.5, Hawaii Revised Statutes, to clarify exemptions to the registration requirements.

1. Religious Organizations

The bill amends the exemption for duly organized religious corporations, organizations, and societies by limiting the exemption to organizations that are not required to file Form 990 or 990EZ with the IRS, such as churches or synagogues. Many other types of religious organizations are required to report to the IRS, and many of these receive substantial sums of money from donors. Requiring religious organizations that are required to report to the IRS to register and annually submit their Form 990 or 990EZ to the Department of the Attorney General will provide for greater accountability by those organizations, and will enable donors to make better informed

giving decisions. Several states' exemptions for religious organizations are similarly limited.

2. *Accredited Educational Organizations*

Currently, the exemption for accredited educational organizations is limited to organizations whose curricula are registered or approved by any state or the federal government. The State of Hawaii does not accredit private schools.¹ This bill replaces the current exemption with an exemption for private schools accredited by certain accrediting bodies. This will provide greater clarity and facilitate compliance.

3. *Government Agencies and Instrumentalities*

This bill clarifies the existing exemption by creating a free-standing exemption for government agencies. It also clarifies the existing exemption for government instrumentalities by limiting it to corporations that are established by act of Congress and that annually report to Congress - for example, the American Red Cross. Other corporations that were created by Congress are not required to annually report to Congress - for example, the National Park Foundation, the United Service Organizations, U.S. Naval Academy Foundation, American Ex-Prisoners of War, AMVETS, Disabled American Veterans, Jewish War Veterans of the United States of America, Paralyzed Veterans of America, and Veterans of Foreign Wars of the United States.

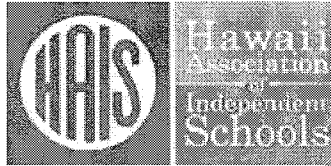
4. *Small Charities*

This bill clarifies the existing exemption for charities that normally receive less than \$25,000 by limiting the exemption to charities that do not employ professional

¹ There is a MOU between the Department of Education (DOE) and the Hawaii Council of Private Schools (HCPS) that allows the HCPS to license private schools but the DOE does not license private schools directly. Public schools are exempt from registration under other provisions of the law.

solicitors or fundraising counsels. The current limitation for charities that do not compensate a person primarily to conduct solicitation is unclear in that it could include salaried staff as well as professional solicitors.

We respectfully request that this bill be passed.



Friday, February 19, 2010
11:00 a.m.
Conference Room 016

TESTIMONY TO
THE SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

RE: SB 2669, SD1 – Relating to the Solicitation of Funds from the Public

Dear Chair Taniguchi, Vice Chair Takamine, and Members of the Committee:

My name is Robert Witt and I am executive director of the Hawaii Association of Independent Schools (HAIS), which represents 99 private and independent schools in Hawaii and educates over 33,000 students statewide.

The Association is in **strong support of Senate Bill 2669, SD1 – Relating to the Solicitation of Funds from the Public**, which amends Chapter 467b, Hawaii Revised Statutes to strengthen and clarify provisions of the registration law to allow for more efficient enforcement of the law and facilitate compliance by the charitable sector.

HAIS is concerned specifically with Section 4 which amends and clarifies the charity registration exemptions as they pertain to accredited educational organizations. Currently, the exemption for accredited educational organizations is limited to those whose curricula are registered or approved by any state or the federal government. The State of Hawaii does not accredit private schools. This bill, as amended, clarifies that the registration exemption for private schools includes those schools that are licensed or accredited by certain licensing or accrediting bodies. This will provide greater clarity and facilitate compliance.

The amendments that HAIS asked for have been made to SB2669, SD1.

Thank you for this opportunity to testify in strong support of this amended measure.