

SB 1233



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

S.B. NO. 1233, S.D. 1, RELATING TO THE SOLICITATION OF FUNDS FROM THE PUBLIC.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, February 24, 2011 TIME: 9:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call Hugh R. Jones, Supervising Deputy Attorney General at 586-1473

Chair Ige and Members of the Committee:

The Department of the Attorney General offers the following written comments for purposes of decisionmaking on this bill. The Department of the Attorney General strongly supports this bill in its current form

The purpose of this bill is to amend Hawaii's charitable solicitation law to: (1) clarify ambiguous provisions, (2) strengthen provisions that will allow the Attorney General to investigate alleged violations by mainland domiciled charities and professional fundraisers, (3) facilitate compliance by the charitable sector, and (4) make other "housekeeping" amendments¹.

More than 1,670 charitable organizations that solicit funds from Hawaii donors are currently registered with the Department as required by chapter 467B, Hawaii Revised Statutes². Approximately 35 percent of these registered charities are

¹This bill is similar to Senate Bill No. 2669, S.D. 2, from the 2010 legislative session that crossed over to the House but was not heard by its assigned subject matter committee.

²A publicly searchable registry of these charities' registration forms and IRS data and their document images can be found at:

<http://ag.ehawaii.gov/charity>.

domiciled in Hawaii. There are presently 48 professional solicitors and 190 professional fundraising counsels that are registered with the Attorney General.

A. Service of Process on Out of State Charitable Organizations

About 65 percent of all registered charitable organizations, and almost all their professional solicitors 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 legal 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. This amendment will facilitate better enforcement of the law, because, at present, it is impossible for the Attorney General to serve subpoenas for mainland domiciled charities and their solicitors.

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, or if they have no registered agent with the Department of Commerce and Consumer Affairs. Substituted service would include registered or certified mail, or such

other method as a court would allow, such as service by publication.

C. Cease and Desist Orders

This bill would allow the Attorney General to issue cease and desist orders – authority currently lacking in the law. This authority could be used to direct non-registered charities or professional solicitors from soliciting funds or to direct a cessation of other practices that violate the law. Any cease and desist order would be subject to administrative review upon request of the party affected.

D. 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.

In addition, the bill authorizes the Attorney General to designate what must be included in a financial report by organizations that do not file a Form 990/990EZ with the IRS.

For example, after December 31, 2010, charities that have less than \$50,000 in income will file Form 990N (an electronic postcard with the IRS)—up from the current \$25,000 income threshold. Still other organizations that solicit funds for charitable purposes, are not legally charities and do not report to the IRS.

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

E. 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.

F. 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, synagogues, or mosques. Many other types of religious organizations are required to annually report to the IRS by filing a Form 990 or 990EZ, and a great number of these organizations 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 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 to those organizations that do not report to the IRS.

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.³ This bill replaces the current exemption with an exemption for private schools accredited by certain accrediting bodies including those regional accrediting bodies that accredit post secondary educational institutions. This will provide greater clarity in the law and facilitate compliance by the charitable sector.

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

³ There is a memorandum of understanding 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.

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 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 independent contractors, such as paid professional solicitors.

G. *Amendments to Reduce Annual Fees*

At the request of the Attorney General, the Senate's subject matter committees amended the bill to reduce the annual fees paid by those registered charities with gross revenues exceeding \$1,000,000 annually. If Senate Draft 1 becomes law, it will lower the gross annual fees collected by over \$132,000 annually and give meaningful financial relief to the charitable sector, while still generating the funds necessary to sustain Hawaii's charitable oversight function.

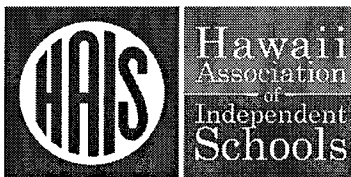
We respectfully request that this bill be passed in its current form.

Registered Nonprofit Organizations by Level of Total Revenue

BMF 11/2010, 2010, Nov data for: State="HI - Hawaii",
 Nonprofit Type="Public Charity"

Level of Total Revenue	Number of Registered Organizations		Number of Organizations Filing Form 990 *		Total Revenue Reported on Form 990 *		Assets Reported on Form 990 *	
A. Less than \$100,000	2,768	48.9%	2,468	71.7%	-261,550,425	-6.6%	6,641,059,781	47.3%
B. \$100,000-249,999	336	5.9%	320	9.3%	52,765,538	1.3%	150,197,984	1.1%
C. \$250,000-499,999	169	3.0%	161	4.7%	56,999,506	1.4%	248,616,057	1.8%
D. \$500,000-999,999	164	2.9%	159	4.6%	114,259,804	2.9%	309,974,525	2.2%
E. \$1-5 mil.	218	3.9%	215	6.2%	470,413,758	11.9%	986,774,304	7.0%
F. \$5-10 mil.	57	1.0%	55	1.6%	388,095,971	9.8%	847,959,301	6.0%
G. \$10-100 mil.	58	1.0%	57	1.7%	1,604,780,357	40.7%	3,363,911,190	24.0%
H. More than \$100 mil.	6	0.1%	6	0.2%	1,519,533,562	38.5%	1,488,007,481	10.6%
Not Reported	1,880	33.2%	1	0.0%	0	0.0%	0	0.0%
Total	5,656	100.0%	3,442	100.0%	3,945,298,071	100.0%	14,036,500,623	100.0%

Source: National Center for Charitable Statistics, Urban Institute. www.urban.org



February 24, 2011
9:00 a.m.
Conference Room 211

TESTIMONY TO
THE SENATE COMMITTEE ON WAYS AND MEANS

RE: SB 1233, SD 1 – Relating to the Solicitation of Funds from the Public

Dear Chair Ige, Vice Chair Kidani, 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 1233 – 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 specifically concerned with Section 5 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 organizations whose curricula are registered or approved by any state or the federal government. The State of Hawaii does not accredit private schools. 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.

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

Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 1233 SD1 Relating to the Solicitation of Funds from the Public
Senate Committee on Ways and Means
Thursday, February 24, 2011, 9:00AM, Rm. 211

The Nature Conservancy of Hawai'i supports the housekeeping provisions of S.B. 1233 SD1 Relating to the Solicitation of Funds from the Public. This measure will assist the Attorney General's office with its oversight of charities operating in Hawai'i for the benefit of the people of this state and the charities themselves.

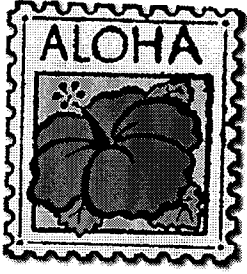
As important to The Nature Conservancy's efforts to protect plants, animals and ecosystems is how we conduct ourselves in our drive for lasting conservation results. At the very top of the list of values held and required of all who represent The Nature Conservancy is **integrity beyond reproach**. We 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 ongoing 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 Hawai'i regarding the charities they so generously support. We also wish to thank the Attorney General's Office for its work to balance the need for relevant information from Hawai'i nonprofits while establishing 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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RE: Testimony in Support of SB 1233 Relating to Solicitation of Funds from the Public

Aloha Senators:

I support SB1233. The Attorney General's office describes this bill as a "housekeeping" measure but I think that is an understatement. Currently under HRS §467B-11.5, charitable organizations exempted from registration and financial disclosure requirements include "(1) Any duly organized religious corporation, institution, or society;"

SB1233 corrects this exemption to mirror federal requirements by ensuring that nonprofits required by the US government to file IRS 990 forms, are also required to register with and disclose finances to the State of Hawaii. The exemption change proposed in SB1233 has been endorsed by the American Institute of Philanthropy (AIP) since 1998.

By changing the registration exemptions for charitable organizations, SB1233 adds transparency and oversight. Currently, Hawaii nonprofits can avoid financial disclosure and registration simply by having a religious purpose or merely claiming to be religious.

The current exemption in HRS §467B-11.5 violates the separation of state and church by favoring religion over non-religion. It's unconstitutional to require secular groups to pay registration fees and exempt non-secular organizations from these fees on the basis of religion.

The state's Registry of Charitable Organizations is an excellent source of information on Hawaii's nonprofits. The addition of religious organizations would greatly improve the public's access to important facts and figures so they can make informed decisions regarding charitable giving.

There are too many multi-million-dollar religious organizations that solicit funds in the State of Hawaii but are not registered here. Please correct that by voting YES on SB1233.

Sincerely,

Holly J. Huber