



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1233, S.D. 2, RELATING TO THE SOLICITATION OF FUNDS FROM THE PUBLIC.

BEFORE THE:

HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE AND ON JUDICIARY

DATE: Wednesday, March 16, 2011 TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Hugh R. Jones, Supervising Deputy Attorney General

Chairs Herkes and Keith-Agaran and Members of the Committees:

The Department of the Attorney General strongly supports this bill in its current form, with the amendments to sections 2 and 5 of Senate Draft 2, noted in our testimony (the requested amendments restore the annual fees paid by registered charities as set forth in Senate Draft 1, and clarify the exemption for accredited educational institutions).

This bill is similar to House Bill No. 1006, H.D. 1, which passed second reading by your committees on February 17, 2011¹.

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" amendments.

More than 1,670 charitable organizations that solicit funds from Hawaii donors are currently registered with the Department

¹This bill is also 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.

as required by chapter 467B, Hawaii Revised Statutes². Approximately 35 percent of these registered charities are 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.

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>.

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

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.

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.

We do request that section 5 of the bill, amending section 467B-11.5, Hawaii Revised Statutes, on page 10-13, be amended to include "friendly amendments" requested by Council for the Advancement and Support of Education, after its passage by the Senate. In particular we suggest the University Foundation and other supporting organizations that principally solicit alumni, parents, and students, also be exempt. We request that paragraph (3) of section 467B-11.5 be further amended to add at the end a reference to other exempt organizations and to read as follows:

- [+2] (3) Any ~~[parent teacher association or]~~ educational institution ~~[, the curricula of which in whole or in part are registered or approved by any state or the United States either directly or by acceptance of accreditation by an accrediting body,]~~ that is licensed or accredited by any of the following licensing or accrediting organizations:
- (A) Hawaii Association of Independent Schools;
 - (B) Hawaii Council of Private Schools;
 - (C) Western Association of Schools and Colleges;

(D) Middle States Association of Colleges and
Schools;

(E) New England Association of Schools and Colleges;

(F) North Central Association of Colleges and
Schools;

(G) Northwest Association of Schools and Colleges;

(H) Southern Association of Colleges and Schools; or

(I) The National Association for the Education of
Young Children;

and any organization exempt from taxation under
section 501(c)(3) of the Internal Revenue Code
expressly authorized by, and having an established
identity with, such an educational institution;
provided that such organization's solicitation of
contributions are primarily directed to students,
alumni, faculty, and trustees of such institutions and
their respective families;

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*

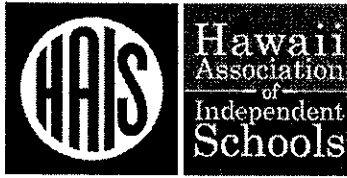
This bill clarifies the existing exemption for charities that normally receive less than \$25,000 by limiting the exemption to charities that do not employ professional solicitors or fundraising counsels. The current limitation for charities that do not compensate a person primarily to conduct solicitation is unclear in that it could include salaried staff as well as independent contractors, such as paid professional solicitors.

G. *Senate 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. The Attorney General respectfully requests that the fee reductions be as set forth in Senate Draft 1 of this measure, rather than Senate Draft 2, which the Senate Ways and Means Committee amended to insert "blanks" for the fee reductions. These annual fees fund two

deputy attorney general positions, and a legal assistant position, allow for the maintenance and enhancement of the registration system, and fund investigation and enforcement efforts.

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



Wednesday, March 16, 2011

2:00 pm

Conference Room 325

TESTIMONY TO
THE HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE AND
JUDICIARY

RE: SB 1233, SD 2 – Relating to the Solicitation of Funds from the Public

Dear Chairs Herkes and Keith-Agaran, Vice Chairs Yamane and Rhoads, and Members of the Committees:

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 SD 2 – 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 SD2 Relating to the Solicitation of Funds from the Public
House Committee on Consumer Protection & Commerce
House Committee on Judiciary
Wednesday, March 16, 2011, 2:00PM, Rm. 325

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 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.

The Nature Conservancy of Hawai'i supports the housekeeping provisions of S.B. 1233 SD2 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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Natalie J. Iwasa, CPA, Inc.
1331 Lunalilo Home Road
Honolulu, HI 96825
808-395-3233

Comments

TO: Committees on Consumer Protection & Commerce and Committee on Judiciary

HEARING

DATE: Wednesday, March 16, 2011, 2 p.m.

RE: SB 1233, SD2 Relating to Solicitation of Funds from the Public

Aloha Chairs Herkes and Keith-Agaran, Vice Chairs Yamane and Rhoads and Members of the Committees,

This bill makes changes to the charity registration law that went into effect the beginning of 2009.

According to page 5, lines 1 through 4 of the bill, a charitable organization is allowed to request an extension of time to file by submitting "a copy of the Internal Revenue Service's approved extension of time to file." It is unclear what is meant by "approved extension." If this refers to the form used by organizations to make a request for extension, please consider revising the wording to indicate that a copy of the IRS's Form 8868 is acceptable.

If the intention is for the organization to submit a copy of IRS Notice CP211A, Application for Extension of Time to File an Exempt Organization Return, which is the letter in which the IRS states whether the application has been approved, it is important to note it may not be possible for the organization to comply with this mandate in a timely manner. In my experience, it takes weeks and sometimes a couple of months for the IRS to send out these notices. In the time that it takes the IRS to send the letter, an organization may have already completed their Form 990 or 990EZ. If this is the intention, please consider revising the requirements to allow organizations to submit the Form 8868 in lieu of the IRS approval letter.

In addition, Section 2 b is also unclear. Is it the intention that only organizations that are required by a governmental authority or third party to have an audit be required for state purposes to submit that audit report to the state if gross revenues exceed \$500,000?

Before finalizing this bill, please consider clarifying these two issues.



Holly J. Huber

1519 Nuuanu Ave #154 • Honolulu, Hawaii
96817

(808) 554-7692 • hollyjhuber@gmail.com
honolulupropertytaxreform.wordpress.com

Hawaii House of Representatives
Committees on Judiciary and Consumer Protection & Commerce
Hawaii State Capitol, Room 325
Hearing: Wednesday, March 16 @ 2:00 PM

RE: Testimony in Support of SB 1233 SD2 Relating to Solicitation of Funds from the Public

Aloha Representatives:

I support SB1233 SD2. The Attorney General's office describes this bill as a "housekeeping" measure but 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 SD2 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 the bill has been endorsed by the American Institute of Philanthropy (AIP) since 1998.

By changing the registration exemptions for charitable organizations, SB1233 SD2 adds transparency and oversight. Currently, Hawaii nonprofits can avoid financial disclosure and registration simply by claiming a religious purpose.

The current exemption in HRS §467B-11.5 violates the separation of state and church by favoring religion over non-religion. It is 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 SD2. It's also a great way to celebrate FREEDOM OF INFORMATION WEEK!

Sincerely,

Holly J. Huber
Public Advocate



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AND SUPPORT OF EDUCATION

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CASE
1307 New York Avenue NW
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USA
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CASE Europe
3rd Floor, Paxton House
90 Artillery Lane
London E1 7LS
United Kingdom
TEL +44 (0) 20 7448 9940
FAX +44 (0) 20 7377 5944

CASE Asia-Pacific
Unit 05-03, Shaw
Foundation Alumni House
11 Kent Ridge Drive
Singapore 119244
TEL +65-6775-3285
FAX +65-6826-4064

**Testimony before the Committee on Consumer Protection & Commerce and Committee on Judiciary,
Hawaii House of Representatives, on S.B. 1233, Relating to Solicitation of Funds from the Public**

John Lippincott
President
Council for Advancement and Support of Education

March 16, 2011

As president of the Council for Advancement and Support of Education (CASE), an association that includes 16 institutional members in Hawaii and more than 3,400 worldwide, I encourage the committees to amend S.B. 1233 to exempt institutionally related foundations and alumni associations from Hawaii's charitable solicitation registration requirements.

Headquartered in Washington, D.C., with offices in London, Singapore and Mexico City, CASE is the professional organization for advancement professionals at all levels who work in alumni relations, communications, fundraising, marketing and other areas. CASE helps its members build stronger relationships with their alumni and donors, raise funds for campus projects, produce recruitment materials, market their institutions to prospective students, diversify the profession, and foster public support of education.

CASE also offers a variety of services for public college and university foundations, also known as institutionally related foundations, and independent alumni associations. While legally separate, these organizations are authorized by their public colleges and universities to raise and manage private support on behalf of their institutions. They also have an established identity with the institutions they support (i.e. University of Colorado Foundation, University of West Florida Foundation).

State charitable solicitation laws are designed to protect the general public from fundraising fraud and abuse. Most states exempt educational institutions from the registration and reporting requirements in these laws because 1) they primarily seek charitable contributions from constituents and organizations that are connected to their institutions, and 2) they are typically large, highly visible institutions accountable to multiple constituencies, such as their governing boards, faculty, students, donors and state and federal agencies. The same could be said of the institutionally related foundations and alumni associations that raise private support on behalf of public colleges and universities.

While S.B. 1233, in its current form, exempts both public and private educational institutions from charitable registration requirements, the bill does not exempt institutionally related foundations or alumni associations. Since most public colleges and universities raise private support through their foundations and/or alumni associations, the entity that is exempt under the bill (the educational institution) is not the primary entity soliciting funds. Practically speaking, private colleges and universities will be exempt from the requirements in the bill while many public colleges and universities will not be exempt.

For these reasons, CASE supports amending S.B. 1233 to equalize the treatment of public and private colleges and universities under the law. The proposed language of the amendment would exempt many institutionally related foundations and alumni associations from the registration requirements and includes two tests that should limit the organizations eligible for the exemption:

- 1) the 501(c) organization must be authorized by AND have an established identity with the educational institution, and
- 2) solicitation of contributions by such organizations must be primarily directed to students, alumni, faculty and trustees of such institutions and their families.

Again, CASE encourages the committees to amend S.B. 1233 to exempt institutionally related foundations and alumni associations from the state's charitable registration requirements. Without an exemption, these legitimate, highly visible organizations will have to divert staff time and resources away from their missions to comply with requirements designed to protect the public from fraudulent charities that are less visible and accountable.

I appreciate the opportunity to provide testimony, and encourage you to contact me if you have any questions about CASE or my testimony. Thank you for your consideration and your commitment to protecting the citizens of Hawaii from charitable fundraising fraud and abuse.

CPCtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 15, 2011 6:48 PM
To: CPCtestimony
Cc: dkealoha@hawaii.bbb.org
Subject: Testimony for SB1233 on 3/16/2011 2:00:00 PM

Testimony for CPC/JUD 3/16/2011 2:00:00 PM SB1233

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: dwight kealoha
Organization: Individual
Address:
Phone:
E-mail: dkealoha@hawaii.bbb.org
Submitted on: 3/15/2011

Comments:

hawaii's BBB supports SB1233 as it clarifies a couple of important areas, enables the AG with additional powers, and serves to protect donors.



March 15, 2011

Chair Robert Herkes, Chair, Committee on Consumer Protection and Commerce
Chair Gilbert Keith-Agaran, Chair, Committee on Judiciary
State Capitol, Room 325
Honolulu, HI 96813

**RE: SENATE BILL 1233, SD 2 RELATING TO THE SOLICITATION OF FUNDS
FROM THE PUBLIC**

Chair Herkes, Chair Keith-Agaran and committee members:

The Hawai'i Alliance of Nonprofit Organizations is a statewide, sector-wide professional association for nonprofits. HANO's mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i. HANO has member organizations serving every community across the state.

HANO supports transparency and best practices for Hawaii's nonprofit sector to maintain the trust of its government and for-profit partners and donors. We support this legislation to the extent that, in its clarified form, it proactively identifies those who violate the basic rules that govern nonprofit fundraising activities and who purport to be assisting nonprofit organizations when they are instead hurting nonprofits.

We have concerns over several technical points. HANO notes that independent schools and in the latest version of this bill, university foundations have been exempted from this registration requirement because there are external accrediting bodies in existence that provide oversight and proper review of their fundraising activities. The SD 2 version contends that these bodies solicit mostly parents and alumni and therefore do not need to be subjected to the same scrutiny. We would like to note that these entities also still solicit individual donors and the corporate community, along with every other charitable nonprofit.

I would also like to note that many other nonprofits are also monitored by accrediting bodies like the Commission on Accreditation of Rehabilitation Facilities (CARF) or the Joint Commission, which accredit healthcare facilities as well as the Better Business Bureau. **If the existence of an independent accreditation suffices to provide proper scrutiny over fundraising activities, enough to exempt a nonprofit organization from AG registration, other accredited nonprofits should be exempt from this law.**

We are not asking for removal of those entities exempted in the current draft, but merely a fair process in considering which organizations should be exempted.

We support the component of SD 2 that clarifies the exemption for those organizations making \$25,000 or less in contributions and do not employ or compensate a professional solicitor or professional fundraising counsel.

HANO Testimony
SB 1233, SD 2
House CPC/JUD Committee Hearing
March 16, 2011
Page Two

We also note that the **annual fee** (tiered fee structure) that accompanies the filing of the organization's 990 tax form can be a **financial hardship** in these challenged economic times when nonprofit budgets are bare bones. HANO proposes that ALL fee levels be lowered to provide financial relief to all organizations that need to file annually with the Attorney General's office.

To the extent possible, HANO would like to **work with the State Attorney General's** office to make the nonprofit registration process as simple and understandable as possible to **ease the burden of multiple reporting endeavors and compliances on nonprofit organizations.**

HANO will continue to partner with the State AG's office to assist in disseminating information to the nonprofit sector to ensure that all nonprofits that are required to register are compliant.

Thank you for the opportunity to provide testimony.

Mahalo,

Lisa Maruyama, President and CEO