

SB 1233

Measure Title:	RELATING TO THE SOLICITATION OF FUNDS FROM THE PUBLIC.
Report Title:	Charitable Organizations; Solicitation of Funds from the Public
Description:	Amends chapter 467B, Hawaii Revised Statutes, to allow service of process by substitute service, allows the Attorney General to accept assurances of discontinuance and to issue cease and desist orders for violations of the law, amends and clarifies the charity registration exemptions, and clarifies the time period for the filing of a charity's annual financial report.
Companion:	HB1006
Package:	Gov
Current Referral:	CPN/JDL, WAM



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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION
AND JUDICIARY AND LABOR

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Tuesday, February 8, 2011
9:15 a.m.

TESTIMONY ON SENATE BILL NO. 1233, RELATING TO THE SOLICITATION OF FUNDS FROM THE PUBLIC.

TO THE HONORABLE ROSALYN H. BAKER AND CLAYTON HEE, CHAIRS, AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in support of Senate Bill No. 1233, Relating to the Solicitation of Funds from the Public. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

Senate Bill No. 1233 proposes several amendments to Hawaii's Charitable Solicitation law that will enhance the ability of the Office of the Attorney General to enforce its provisions. It seeks to authorize service of process by substitution service, allows the Attorney General of Hawaii to accept assurances of discontinuances and to

Testimony on Senate Bill No. 1233
Tuesday, February 8, 2011
Page 2

issue cease and desist orders for violations of the law, clarifies the charity registration exemptions, and provides a clearer understanding of the time period for filing of a charity's annual financial report. In view of the meritorious nature of this bill, and the resulting benefit to consumer protection in Hawaii, the Department is in support of its provisions.

Thank you for providing me with the opportunity to testify. I will be happy to answer any questions that the committee members may have.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION AND ON
JUDICIARY AND LABOR

DATE: Tuesday, February 8, 2011 TIME: 9:15 a.m.

LOCATION: State Capitol, Room 229

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

Chair Baker, Chair Hee, and Members of the Committee:

The Department of the Attorney General strongly supports this bill, with the amendments noted in section G below.

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 domiciled in Hawaii. There are presently 48 professional

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>.

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*

When the Legislature adopted the registration and annual fee requirements in 2008, it was not clear how many charitable organizations would be required to register, and how much would be collected in annual fees. For example, when the Department of Commerce and Consumer Affairs administered the registration law that was repealed in 1994, there were less than 150 registered charitable organizations. There are now more than 1600 registered charitable organizations today.

The annual fees being paid by registered charitable organizations are in excess of what is reasonably required to

sustain the Attorney General's charitable oversight function and to fund the required personnel positions. In addition, the economic recession has also taken its toll on the charitable sector. Accordingly, the Attorney General is requesting that Section 3 of this bill be amended by amending subsection (d) of section 467B-6.5, HRS as follows:

"(d) Each charitable organization filing a report required by this section shall pay a filing fee to the department, based on the total amount of its [~~income and receipts~~] gross revenues during the time covered by the report at the close of the calendar or fiscal year adopted by the charitable organization as follows:

- (1) \$10, if less than \$25,000;
- (2) \$25, if \$25,000 but less than \$50,000;
- (3) \$50, if \$50,000 but less than \$100,000;
- (4) \$100, if \$100,000 but less than \$250,000;
- (5) \$150, if \$250,000 but less than \$500,000;
- (6) \$200, if \$500,000 but less than \$1,000,000;
- (7) [~~\$300~~] \$250, if \$1,000,000 but less than \$2,000,000;
- (8) [~~\$500~~] \$350, if \$2,000,000 but less than \$5,000,000;
- or
- (9) [~~\$750~~] \$600, if \$5,000,000 or more."

Although only 6.1 percent of Hawaii domiciled charities registered with the IRS have incomes over \$1 million annually⁴ (see attached table), these amendments if adopted, it will lower the gross annual fees collected by over \$132,000 annually and give meaningful financial relief to the charitable sector, while

⁴Most of the annual fees collected are paid by mainland domiciled charities that are activity soliciting funds in Hawaii from Hawaii donors.

still generating the funds necessary to sustain Hawaii's charitable oversight function.

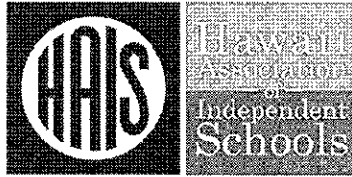
We respectfully request that this bill be passed with the amendments noted above.

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 8, 2011
9:15 a.m.
Conference Room 229

TESTIMONY TO
THE SENATE COMMITTEES ON COMMERCE & CONSUMER PROTECTION AND
JUDICIARY & LABOR

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

Dear Chairs Baker and Hee, Vice Chairs Taniguchi and Shimabukuro, 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 – 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 6 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.

Recommended amendment: HAIS respectfully recommends that this bill be amended as follows:

The National Association for the Education of Young Children should be added as one of the licensing or accrediting organizations recognized in the bill.

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



February 7, 2011

Chair Rosalyn Baker, Senate Committee on Commerce and Consumer Protection
Chair Clayton Hee, Senate Committee on Judiciary and Labor
State Capitol, Room 229
Honolulu, HI 96813

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

Chair Baker, Chair Hee 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 in 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 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. I would 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 indeed the existence of an independent accreditation suffices to exempt a nonprofit organization from AG registration, other accredited nonprofits should be exempt from this law.** At present, the law does not make those distinctions.

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 very trim. 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.

Lisa Maruyama, President and CEO

Hawaii's Better Business Bureau (BBB) supports the passage of SB 1233 as it is designed to clarify 467B by a number of fixes to include:

- allowing the AG to investigate alleged violations by mainland domiciled charities and professional fundraisers
- use of the 990 to serve as the financial report to include reporting timelines
- reduced fees assessed for filing in three instances (although BBB recommends reductions be applied to fees of \$100, \$150 and \$200 as well).

Dwight Kealoha | *CEO*

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