

STAND. COM. REP. NO.

599

Honolulu, Hawaii

FEB 17 2023

RE: S.B. No. 667
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 667 entitled:

"A BILL FOR AN ACT RELATING TO NONPROFIT ORGANIZATIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to clarify the application of the general excise tax law with regard to gross income derived from unrelated trade or business activities of nonprofit organizations.

Your Committee received testimony in support of this measure from Hawai'i Youth Services Network; Hawai'i Alliance of Nonprofit Organizations; The Nature Conservancy; Hawaiian Humane Society; Outrigger Duke Kahanamoku Foundation; Nā Hale o Maui; Big Brothers Big Sisters Hawaii, Inc.; Boys and Girls Club of Hawaii; Catholic Charities Hawai'i; American Heart Association, Inc.; American Cancer Society Cancer Action Network; Hawai'i State Coalition Against Domestic Violence; Family Promise of Hawai'i; Kilinahe Foundation; Ho'ōla Nā Pua; Samaritan Counseling Center Hawaii; Shinshu Kyokai Mission of Hawaii; Ku'ikahi Meditation Center; H.T. Hayashi Foundation; Grow Some Good; After-School All-Stars Hawaii; Pōpoki Place O'ahu Cat Sanctuary; Revitalized Life Ally B LLC; Hawaii Bicycling League; 'A'ali'i Mentoring; Hawai'i Children's Action Network Speaks!; Child and Family Service; and seven individuals. Your Committee received comments on this measure from the Department of Taxation and Tax Foundation of Hawaii.



Your Committee finds that both state and federal law exempt nonprofit organizations from income tax. Furthermore, under both state and federal law, nonprofit organizations are taxed on income that is generated by an unrelated business activity not substantially related to the nonprofit organization's tax-exempt purpose. However, federal law and Hawaii law differ in their tax treatment of fundraising income. The federal income tax law does not tax fundraising income, while a nonprofit organization's fundraising income is subject to the State's general excise tax. Because Hawaii's nonprofit sector plays a critical role in the economic and social well-being of the State's residents, this measure is necessary to align the state general excise tax law with the federal income tax law as it relates to fundraising income of nonprofit organizations.

Your Committee notes the testimony of several testifiers who stated their preference for the amendments contained in Senate Bill No. 950 (2023), which is nearly identical to this measure but incorporates a technical amendment that addresses the concerns raised by the former Administration in vetoing Senate Bill No. 3201, S.D.1, H.D.1, C.D.1 (2022).

Therefore, your Committee has amended this measure by:

- (1) Clarifying that, in considering whether an activity is an "unrelated trade or business", the modifications to unrelated business taxable income, as provided in section 512(b)(3) of the Internal Revenue Code of 1986, as amended, shall not apply; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 667, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 667, S.D. 1, and be referred to your Committee on Ways and Means.



Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



JARRETT KEOHOKALOLE, Chair



