

STAND. COM. REP. NO. 1282

Honolulu, Hawaii

MAR 17 , 2023

RE: S.B. No. 667
S.D. 2
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committee on Economic Development, to which was referred
S.B. No. 667, S.D. 2, entitled:

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

begs leave to report as follows:

The purpose 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 the Kilinahe Foundation; Hawai'i Alliance of Nonprofit
Organizations; North Shore EVP; Hawaiian Humane Society; East
Hawaii Cultural Center; Samaritan Counseling Center Hawaii; Epic
'Ohana, Inc.; Hale Kipa, Inc.; Hawai'i Forest Industry Association;
Imua Discovery Garden; Epilepsy Foundation; Hawai'i Youth Services
Network; Coalition for a Drug-Free Hawaii; Grow Some Good; Parents
And Children Together; Ko'olau Foundation; Outrigger Duke
Kahanamoku Foundation; American Cancer Society Cancer Action
Network; The Nature Conservancy; Kua'āina Ulu 'Auamo; Catholic
Charities Hawai'i; Big Brothers Big Sisters Hawaii; Hawai'i Fetal
Alcohol Spectrum Disorders FASD Action Group; Going Home Hawai'i;
Family Promise of Hawai'i; Association of Fundraising Professionals

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Aloha Chapter; Ku'ikahi Mediation Center; Hawai'i Public Health Institute; Boy Scouts of America, Aloha Council; and three individuals. Your Committee received comments on this measure from the Department of Taxation and Tax Foundation of Hawaii.

Your Committee finds that nonprofit organizations are exempt from federal income taxation except on unrelated business activity not substantially related to their tax-exempt purpose. At the state level, the fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of certain entities and the activities of hospitals, infirmaries, sanitarium, and potable water companies are exempt from state general excise taxation, but instead of excepting analogous unrelated business activities, the state general excise tax excepts "any activity the primary purpose of which is to produce income even though the income is to be used for or in furtherance of the exempt activities of such persons." One consequence of the differing provisions and interpretations of these federal and state laws is that income from certain activities, such as fundraising, of nonprofit organizations is exempt from the federal income tax but subject to the state general excise tax. This measure proposes to repeal the provision in the general excise tax law that excepts income from certain activities from the general excise tax exemption, while ensuring that gross income derived from unrelated trade or business, as defined in federal law and except for certain amounts relating to rents, remains subject to the general excise tax.

Your Committee notes the concerns raised by the Department of Taxation that this measure is similar to a bill vetoed in 2022 due to the then-Governor's determination that passage of the bill could result in undesirable consequences that go beyond the purpose of the bill, which is solely to exempt certain nonprofit organization fundraising income from the general excise tax. During the hearing, the Department indicated to your Committee that it does not believe this measure addresses the concerns of the previous Governor. Your Committee encourages the Department of Taxation and stakeholders of this measure to continue to work with your Committee to craft language that provides the intended exemption from the state general excise tax and minimizes the likelihood of this measure also being vetoed.

Your Committee has amended this measure by:



- (1) Changing its effective date to June 30, 3000, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Economic Development that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 667, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 667, S.D. 2, H.D. 1, and be referred to your Committee on Consumer Protection & Commerce.

Respectfully submitted on
behalf of the members of the
Committee on Economic
Development,



DANIEL HOLT, Chair



