



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 1067, S.D. 1, RELATING TO CHARITABLE SOLICITATION.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Friday, February 27, 2015

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN TESTIMONY ONLY.

(For more information, contact Hugh R. Jones,
Supervising Deputy Attorney General at 586-1473.)

Chair Tokuda and Members of the Committee:

The Attorney General supports the passage of this bill with amendments requested by interested parties that are noted and described herein. A copy of the requested proposed amendments are attached to this testimony.

The purposes of this bill are to amend Hawaii's charitable solicitation law to: (1) clarify that only charitable organizations that solicit contributions from the public are subject to registration requirements and allow charities that have a group exemption ruling from the IRS to register on behalf of all subordinate organizations; (2) clarify provisions applicable to commercial co-venturers and create penalties for non-compliance; (3) provide for electronic submission of end of solicitation campaign financial reports by registered professional (paid) solicitors; (4) impose a late fee for the late submission of annual financial reports by registered professional solicitors identical to the existing late fee in section 467B-6.5(e), Hawaii Revised Statutes (HRS), for the late submission of financial reports by registered charities, (5) repeal the annual fee for charitable organizations that have under \$25,000 in gross revenues and tie the requirement for audited financial statements to contributions and not gross revenues; and (6) clarify the registration exemption applicable to accredited educational institutions and to facilitate the electronic submission of exemption applications by charitable organizations eligible for a registration exemption.

Clarification of Registration Requirements

Section 1 of the bill makes clear that charitable organizations that do not solicit contributions are not subject to registration. This would include most private foundations and endowed charities.

Electronic Submission of Professional Solicitor Financial Reports and Late Fees

Section 2 of the bill provides for the electronic submission of the financial reports that professional solicitors are required to submit to the Attorney General at the end of a solicitation campaign that the professional solicitor has conducted on behalf of a charity. Chapter 467B, HRS, presently provides for electronic registration by charitable organizations that must register with the Attorney General. Section 467B-2.1, HRS.

The Department of the Attorney General will soon be deploying an Internet based registration and registration renewal system ("System") for professional solicitors and professional fundraising counsels. The System will process registrations and renewals and allow registered fundraisers to submit contracts, and allow registered professional solicitors to submit their end of solicitation campaign financial reports electronically as well. This System will provide for more robust public access to information that is currently submitted by registered fundraisers in paper form and then compiled on the Attorney General's website.

Section 2 of the bill also allows for the assessment of late fees to professional solicitors that fail to timely file an end of campaign financial report. The Attorney General has discovered a significant number of registered professional solicitors that have failed to timely file end of solicitation campaign financial reports required by section 467B-2.5, HRS. In some cases registered solicitor's annual financial reports have been very delinquent despite efforts by the Department to prod solicitors to be compliant. This bill will create a financial incentive to timely file the required end of solicitation campaign financial report by creating a late fee identical to the existing late fee provided in section 467B-6.5(e), HRS, applicable to annual financial reporting by registered charities.

Clarification of Commercial Co-Venturer Requirements and Electronic Submission of Consent Forms

Section 3 of this bill proposes to amend section 467B-5.5, HRS, to require an accounting to each charity by a commercial co-venturer no more than 90 days after any charitable sales

promotion and authorizes the Attorney General to issue cease and desist orders to commercial co-venturers who are in violation of the requirements applicable to commercial co-venturers and to impose civil penalties for violations. The Attorney General currently has the authority to issue cease and desist orders for violations by registered charities and professional fundraisers. Additionally, section 3 of this bill provides for the electronic submission of the consent forms signed by both the charity and the commercial co-venturer memorializing the agreement between the charity and the commercial co-venturer with respect to the charitable sales promotion.

Clarification of Annual Financial Reporting by Registered Charities

Section 4 of the bill modifies the due date by which a registered charity's annual financial report is due to the Attorney General. Under the current law, a registered charity's annual financial report is due to the Attorney General on the same day that the charity files its annual information return with the IRS. The amendment in section 4 of this bill allows the charity to submit its annual financial report with the Attorney General within 10 days after it has been filed with the IRS.

Section 4 also clarifies that a registered charity must submit an audited financial statement annually if its contributions exceed \$500,000. Presently the audit "threshold" is tied to gross revenues. This change will spare many registered charities the significant expense of conducting audits based on the fact that under chapter 467B, HRS, the definition of "contribution" does not include amounts received for membership dues, government grants, or grants from other organizations that have been granted tax exempt status under section 501(c)(3) of the Internal Revenue Code

Section 4 also repeals the \$10 annual fee for registered charities with under \$25,000 in gross revenues. The Attorney General hopes that this change will serve as an incentive for charities that might otherwise qualify for exemption to register because annual financial reporting would be without cost.

Clarification of Exemptions to Registration

Section 5 of the bill clarifies the exemption for accredited educational institutions due to a name change in one of the accrediting bodies. The Department has been working with the Hawaii Information Consortium to develop and launch a module that will allow charities eligible for a registration exemption to submit an exemption application electronically. Accordingly,

section 5 of this bill provides for the electronic submission of exemption applications that will streamline the application process and eliminate the current paper application process.

“Friendly Amendments” Requested

Based on discussions with the Association of Fundraising Professionals, Aloha Chapter (“AFP”), and law firms specializing in charitable registration requirements, the additional “friendly” amendments are requested to this bill:

1. *Clarification that Registration Requirements Do Not Apply to Grant Writers*

One amendment jointly requested by the Attorney General and AFP is to make far clearer that grant writers are not subject to registration under chapter 467B, HRS. A careful reading of the law obtains this result, however, the proposed amendment to the definitions of the terms professional fundraising counsel and solicit and solicitation make this point clearer and understandable. The Attorney General and AFP jointly request that the bill be amended to make the requested amendment to section 467B-1, HRS, as set forth in the attached document.

2. *Mandated Disclosures Paid Professional Solicitors*

Generally, most professional solicitors are individuals or for-profit organizations that are hired and compensated by charities to conduct charitable contribution solicitation campaigns on behalf of the charity. Often these campaigns involve phone calls, mailings, and emails that bring the professional solicitor in direct contact with the public. Hawaii’s existing mandated disclosures by professional solicitors are not as protective and strong as those that exist in many other states. In a recent investigation of a paid professional solicitor for the Hawaii Police Athletic Federation, the professional solicitor, who was to receive 80 percent of the total contributions it collected on behalf of the charity, engaged in a phone campaign and lead potential donors to believe it was the charity and not a paid solicitor contacting them by phone. The Attorney General and AFP jointly request that the bill be amended to make the requested mandated disclosure amendments to section 467B-1.5, HRS, as set forth in the attached document. The proposed disclosures will require professional solicitors to be more transparent and accountable to potential donors when conducting their solicitation campaigns.

3. *Redescribing a "Fine" as a "Late Fee"*

Law firms specializing in state registration requirements nationwide have requested the Attorney General to change the word "fine" that appears four (4) times in section 2 of the bill to the words "late fee." This request is due to the fact that describing the fee as a "fine" would require registered professional fundraisers to report the imposition of this "fine" on renewal registrations in almost 39 states. The Attorney General is agreeable to this change.

4. *The Amendments Proposed in Senate Draft 1*

The Attorney General and AFP jointly propose that the bill be amended to create new sections 1 and 2 to read in the form attached to this testimony and the other sections be renumbered accordingly

The Attorney General requests the Committee's favorable consideration of this measure with the amendments noted herein.

Section 467B-1, Hawaii Revised Statutes, is amended by amending the definitions of "professional fund-raising counsel" or "professional fundraising counsel" and "solicit" and "solicitation" to read as follows:

"Professional fund-raising counsel" or "professional fundraising counsel" means any person who, for compensation, plans, conducts, manages, advises, consults, or prepares material for, or with respect to, the solicitation of contributions in this State for a charitable organization, but who actually solicits no contributions as a part of the person's services, and who does not employ, procure, or engage any compensated person to solicit contributions. The term shall not include a bona fide volunteer, salaried officer, or employee of a charitable organization[+], or if the only services performed are to plan, conduct, manage, advise, consult, or prepare grant or subsidy application materials for a charitable organization.

"Solicit" and "solicitation" mean a request directly or indirectly for money, credit, property, financial assistance, or thing of value on the plea or representation that the money, credit, property, financial assistance, or thing of value, or any portion thereof, will be used for a charitable purpose or to benefit a charitable

organization. These terms shall include the following:

- (1) Any oral or written request [f]; [t]
- (2) The making of any announcement to any organization for the purpose of further dissemination, including announcements to the press, over the radio or television, or by telephone, telegraph, or facsimile, concerning an appeal or campaign by or for any charitable organization or purpose [f]; [t]
- (3) The distribution, circulation, posting, or publishing of any handbill, written advertisement, or other publication that directly or by implication seeks to obtain public support [f]; [t]
- (4) Where the sale or offer or attempted sale, of any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in connection with which any appeal is made for any charitable organization or purpose; or where the name of any charitable organization is used or referred to in any appeal as an inducement or reason for making any sale; or where in connection with any sale,

any statement is made that the whole or any part of the proceeds from any sale will be used for any charitable purpose or to benefit any charitable organization[+]; [+]

- (5) A request made through the use of receptacles for contributions such as honor boxes, vending machines, wishing wells, contribution boxes, and novelty machines, where a charitable appeal is used or referred to or implied as an inducement or reason to contribute.

A solicitation occurs whether or not the person making the solicitation receives any contribution. However, the term shall not include the submission of a grant or subsidy proposal or application to a governmental authority or any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code."

Section 467B-1.5, Hawaii Revised Statutes, is amended to read as follows:

"[+] §467B-1.5[+] Professional solicitors; required disclosures. ~~[A professional solicitor who makes an oral solicitation by telephone, door to door, or otherwise shall furnish to each contributor, prior to collecting or~~

~~attempting to collect any contribution, a written confirmation of the expected contribution, containing the following information clearly and conspicuously:~~

~~(1) The full legal name, address, and telephone number of the individual professional solicitor who directly communicated with the contributor, and~~

~~(2) A disclosure that the contribution is not tax-deductible, if applicable, or, if the professional solicitor maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the professional solicitor maintains is tax~~

~~deductible.]~~ (a) Every professional solicitor,

and every employee or agent thereof, who solicits contributions from a prospective donor or contributor in this State shall at the outset of any oral or written request for a contribution:

(1) Identify themselves by their true surname and first name, and the name of their employer or the contractor as the case may be, that is compensating the individual making the solicitation;

(2) Identify the name of the professional solicitor registered with the department of the attorney general that has contracted with the charitable organization to provide the solicitation services and if the individual is employed by a subcontractor, the name of the registered subcontractor;

(3) Disclose that such person is being paid to make such solicitation and the name of the charitable organization on whose behalf they are soliciting for; and

(4) Disclose, orally and in writing, the fact that a copy of the professional solicitor's registration data and financial reports are available from the department of the attorney general.

(b) A professional solicitor who makes an oral solicitation by telephone, door-to-door, or otherwise, prior to collecting or attempting to collect any contribution, shall provide a written confirmation of the expected contribution and clearly disclose whether the contribution is not tax-deductible, if applicable, or, if the professional solicitor maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the professional solicitor maintains is

tax-deductible. Such written confirmation shall also
conspicuously disclose the name and current address of the
registered professional solicitor."

Aloha United Way

200 N. Vineyard Blvd., Suite 700
Honolulu, Hawaii 96817-3938
Telephone (808) 536-1951
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Website: www.auw.org



Aloha United Way

LATE

Cover Sheet

Testifying Agency: Aloha United Way
Cindy Adams, President & CEO

Senate Committee on Ways and Means
Senator Jill N. Tokuda, Chair
Senator Ronald D. Kouchi, Vice Chair

Friday, February 27, 2015 at 9:00 A.M.

Conference Room 211

SB 1067, SD1: Relating to Charitable Solicitation: Testimony in Support

Aloha United Way

200 N. Vineyard Blvd., Suite 700
Honolulu, Hawaii 96817-3938
Telephone (808) 536-1951
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February 26, 2015

To: Senator Jill N. Tokuda, Chair, Committee on Ways and Means
Senator Ronald D. Kouchi, Vice-Chair, Committee on Ways and Means

Re: SB 1067 SD 1 Relating to Charitable Solicitation – **SUPPORT**
Hearing: Friday, February 27, 2015; Room 211; 9:00 AM

Honorable Chairs & Committee Members:

Aloha United Way supports SB 1067 SD 1 which improves HRS Chapter 467B by making reporting requirements more consistent and appropriate to the size of the nonprofit.

Nonprofit funding spent on reporting is not being spent on the nonprofits mission to improve the quality of life in our community. There is a delicate balance between collecting the information required to govern the operation of nonprofits and the costs associated with providing the reports. The changes envisioned in SB 1067 SD 1 make appropriate adjustments to the reporting requirements while preserving the Attorney General's mandate to gather adequate information to monitor and evaluate the agency's performance.

Thank you for the opportunity to submit testimony. We urge your favorable consideration of SB 1067 SD 1.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Adams", with a long horizontal flourish extending to the right.

Cindy Adams
President & Chief Executive Officer



**Testimony to the Senate Committee on Ways and Means
Sen. Jill Tokuda, Chair
Sen. Ronald Kouchi, Vice Chair
Friday, February 27, 2015 at 9:00 a.m.
Conference Room 211
SB1067 SD 1 - Relating to Charitable Solicitation**

Dear Chair Tokuda, Vice Chair Kouchi, and members of the Committee:

On behalf of the Hawai'i Alliance of Nonprofit Organizations, I would like to offer our comments in **support of SB 1067 SD 1** relating to charitable solicitation.

Hawai'i Alliance of Nonprofit Organizations (HANO) is a statewide, sector-wide professional association of nonprofits. Our mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i. Our member organizations provide essential services to every community in the state.

HANO supports this measure because it improves and clarifies the charitable solicitation law. The SD1 version also includes two provisions which HANO strongly supports:

- **Filing fees:** The SD1 reduces the annual filing fee from \$10 to \$0 for small organizations (under \$25,000 in annual revenue). This change would encourage additional small organizations to file reports instead of filing for exemptions. With more organizations filing reports, the state will have more data about Hawaii's nonprofit sector.
- **Audited financial reports:** The SD1 requires audited financial reports for organizations with contributions (instead of gross revenues) over \$500,000. Audited financial reports prepared by CPAs are extremely costly, and represent a major burden for smaller nonprofits. Furthermore, they may be unnecessary for many smaller nonprofits with relatively uncomplicated financial structures. This change will relieve many small to medium nonprofits from the burden of this expense. Please note that nonprofits will still be subject to other reporting requirements, including submitting their IRS Form 990 that includes extensive financial and governance disclosures.

Thank you for the opportunity to provide testimony.

Mahalo,
Nikki Love Kingman
Public Policy Director

TO: Members of the Committee on Ways and Means

FROM: Natalie Iwasa
Honolulu, HI 96825
808-395-3233

HEARING: 9 a.m. Friday, February 27, 2015

SUBJECT: SB 1067, SD1, Charitable Solicitation **COMMENTS**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB1067, SD1, which makes changes to the Hawaii charity registration and solicitation law.

The intent behind this law was to require charitable organizations that receive donations from the public to report certain information. Nonprofit organizations may have many sources of revenue that put them over the \$500,000 threshold but low levels of donations from individuals. The current law sometimes requires nonprofits to obtain costly audits when they otherwise would not be required. I therefore support the change on page 10 line 3 from “gross revenue” to “contributions,” so that those charities that are receiving higher amounts of public donations are the ones that are required to obtain audits.

I also support the reduction in fee from \$10 to \$0 for organizations with gross revenues less than \$25,000.