



GOV. MSG. NO. 1405

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 12, 2022

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB3201 SD1 HD1 CD1, without my approval and with the statement of objections relating to the measure.

SB3201 SD1 HD1 CD1

RELATING TO NONPROFIT ORGANIZATIONS.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 12, 2022

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 3201

Honorable Members
Thirty-First Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, Senate Bill No. 3201, entitled "A Bill for an Act Relating to Nonprofit Organizations."

The purpose of this bill is "to align the state general excise tax with the federal income tax law by exempting from the State's general excise tax, the fundraising income generated by a tax-exempt nonprofit organization, while retaining the general excise tax for gross income derived from any 'unrelated trade or business', as defined by the Internal Revenue Code." This bill has an effective date of January 1, 2023; provided that, if this bill becomes an act, on December 31, 2027, the act shall be repealed and section 237-23, Hawaii Revised Statutes, shall be reenacted in its previous form.

This bill is objectionable because it may lead to undesirable consequences that go beyond the intended purpose of the bill, which is solely to exempt certain nonprofit organization fundraising income from the general excise tax (GET). The Department of Taxation notes that the bill will have the unintended consequence of making certain types of income currently exempt from the GET, such as passive income, subject to tax. Thus, enacting this bill would negatively impact the general public, public entities, and nonprofit organizations.

Moreover, the Department of Taxation estimates that this measure will result in a general fund decrease of \$1,400,000 in fiscal year 2022-2023; \$3,500,000 in fiscal year 2023-2024; \$3,600,000 in fiscal year 2024-2025; \$3,600,000 in fiscal year

STATEMENT OF OBJECTIONS
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2025-2026; \$3,700,000 in fiscal year 2026-2027; and \$3,800,000 in fiscal year 2027-2028.

For the foregoing reasons, I am returning Senate Bill No. 3201 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large, sweeping "Y" and a long, horizontal stroke at the end.

DAVID Y. IGE
Governor of Hawai'i

A BILL FOR AN ACT

RELATING TO NONPROFIT ORGANIZATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the federal
2 government exempts nonprofit organizations from federal income
3 tax because these organizations provide communities with
4 critically needed programs, goods, and services, many of which
5 would otherwise be provided by government agencies and,
6 therefore, taxpayers. However, the federal government does not
7 exempt any income of nonprofit organizations that is generated
8 by an unrelated business activity not substantially related to
9 the nonprofit organization's tax-exempt purpose.

10 The legislature further finds that, like the federal income
11 tax law, the State provides an exemption from the general excise
12 tax for income generated by a nonprofit organization's
13 charitable activities. Similar to the spirit and intent of the
14 federal "unrelated business income" tax provision, state general
15 excise tax law does not exempt any income of nonprofit
16 organizations that is generated by activity "the primary purpose
17 of which is to produce income even though the income is to be



1 used for or in furtherance of the exempt activities" of the
2 nonprofit organization.

3 The legislature also finds that because the State's general
4 excise tax law referring to "the primary purpose of which is to
5 produce income" does not align with the federal "unrelated
6 business income" provision, nonprofit organizations have
7 additional burdens in accounting for income in disparate ways.
8 While the federal law is clear with an extensive body of
9 interpretation, there remains ambiguity with the state general
10 excise tax provision. More significantly, federal income tax
11 law does not consider fundraising income as unrelated business
12 income and, therefore, fundraising income is not subject to
13 federal income tax. However, state law has been interpreted to
14 regard fundraising income as subject to the general excise tax.

15 The legislature additionally finds that imposing the
16 general excise tax on a nonprofit organization's fundraising
17 income deprives the nonprofit sector of needed financial support
18 for the delivery of program services. Since the general excise
19 tax is imposed on gross income, nonprofit organizations are
20 taxed on fundraising income without deduction for any costs
21 related to those fundraising activities, such as room rentals,



1 food and beverage service, marketing, and other expenses,
2 resulting in a financial "double whammy" on nonprofit
3 organizations.

4 The purpose of this Act is to align the state general
5 excise tax law with the federal income tax law by exempting from
6 the State's general excise tax, the fundraising income generated
7 by a tax-exempt nonprofit organization, while retaining the
8 general excise tax for gross income derived from any "unrelated
9 trade or business", as defined by the Internal Revenue Code.
10 This Act expands the general excise tax exemptions available to
11 charitable, religious, and educational organizations and is not
12 intended to limit or restrict any currently available tax
13 exemptions. Furthermore, this Act does not affect rental income
14 generated by an unrelated trade or business, which will continue
15 to be subject to the general excise tax.

16 SECTION 2. Section 237-23, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) The exemptions enumerated in subsection (a)(3) to (7)
19 shall apply only:

20 (1) To those persons who shall have registered with the
21 department of taxation by filing a written application



1 for registration in such form as the department shall
2 prescribe, shall have paid the registration fee of
3 \$20, and shall have had the exemption allowed by the
4 department or by a court or tribunal of competent
5 jurisdiction upon appeal from any assessment resulting
6 from disallowance of the exemption by the department;

7 (2) To activities from which no profit inures to the
8 benefit of any private stockholder or individual,
9 except for death or other benefits to the members of
10 fraternal societies; and

11 (3) To the fraternal, religious, charitable, scientific,
12 educational, communal, or social welfare activities of
13 such persons, or to the activities of hospitals,
14 infirmaries, sanitarium, and potable water companies,
15 as such~~[, and not to any activity the primary purpose~~
16 ~~of which is to produce income even though the income~~
17 ~~is to be used for or in furtherance of the exempt~~
18 ~~activities of such persons.];~~ provided that gross
19 income derived from any "unrelated trade or business",
20 as defined in section 513 of the Internal Revenue Code
21 of 1986, as amended, shall not be exempt under this



1 section; provided further that in considering whether
2 an activity is an "unrelated trade or business", the
3 modifications to unrelated business taxable income, as
4 provided in section 512(b) of the Internal Revenue
5 Code of 1986, as amended, shall not apply."

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on January 1, 2023;
9 provided that, on December 31, 2027, this Act shall be repealed
10 and section 237-23, Hawaii Revised Statutes, shall be reenacted
11 in the form in which it read on the day before the effective
12 date of this Act.



S.B. NO. 3201
S.D. 1
H.D. 1
C.D. 1

APPROVED this day of , 2022


GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI‘I

Date: May 3, 2022
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate
of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2022.


President of the Senate


Clerk of the Senate

SB No. 3201, SD 1, HD 1, CD 1

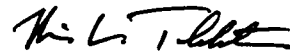
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 03, 2022
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives