

Honolulu, Hawaii  
APR 28, 2006

RE: S.B. No. 965  
S.D. 2  
H.D. 1  
C.D. 1

Honorable Robert Bunda  
President of the Senate  
Twenty-Third State Legislature  
Regular Session of 2006  
State of Hawaii

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Third State Legislature  
Regular Session of 2006  
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 965, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO ELECTRONIC SURVEILLANCE,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to amend Hawaii's electronic surveillance law by, among other things:

- (1) Deleting the requirement that an applicant for an intercept order appear at an in camera adversary hearing on the application and that the judge appoint independent counsel to oppose the application;
- (2) Establishing a surveillance review unit in the Department of the Attorney General to review all applications for interception of wire, oral, or electronic communications;



- (3) Requiring that a written memorandum from the unit deputy Attorney General accompany each application for an intercept order, with a recommendation to approve or disapprove the application;
- (4) Protecting applications and orders from disclosure absent a showing of good cause;
- (5) Making it a class C felony for any person to intentionally disclose the contents of any intercepted communication with intent to interfere with a criminal investigation;
- (6) Allowing the Attorney General to seek an injunction against any illegal interception of communication; and
- (7) Requiring annual reports to the Legislature concerning pen register orders and orders for trap and trace devices.

Your Committee on Conference has amended this measure to:

- (1) Modify section 641-13, Hawaii Revised Statutes, to provide for an appeal from a denial of an intercept order;
- (2) Insert language to take into account installation of tracking devices which are installed by or with the consent of the owner, such as a global position system like On-Star;
- (3) Rephrase language that addresses *State v. Lo*, 66 Haw. 653 (1983);
- (4) Delete the provision that explicitly authorizes a person to disclose an illegally intercepted communication in the course of publication of truthful information of public concern;
- (5) Add distribution of dangerous, harmful or detrimental drugs and conspiracy to commit murder, kidnapping, felony criminal property damage, or distribution of dangerous, harmful or detrimental drugs to the list of predicate crimes that do not require an organized crime component;
- (6) Add money laundering as a crime for which interception can be authorized when connected with organized crime;



- (7) Insert language to prohibit the use of wiretap evidence in the State's case in chief if the highest grade of offense charged is a misdemeanor;
- (8) Add language to prohibit the contents of wire, oral, or electronic communication and evidence derived therefrom from being used in court proceedings if the communication or evidence was gathered in violation of the electronic surveillance law;
- (9) Insert an exception to the requirements of an application for an order authorizing or approving an interception of a wire, oral, or electronic communication relating to the specification of the location of the facilities from which the communication is to be intercepted;
- (10) State that an application for an order authorizing or approving an interception of a wire, oral, or electronic communication is to have a full and complete but not unduly technical or complex statement of the facts concerning how the interception is to be accomplished;
- (11) Change the period of extension from fifteen days to thirty days;
- (12) Add a provision allowing the denial of an application as a trigger of the ninety-day period in which to serve an inventory;
- (13) Insert language to give judges more discretion as to what shall be made available for inspection and for disclosure;
- (14) Delete the requirement that inventory include notice of whether the intercepted statements were incriminating;
- (15) Add a provision that allows the government to require a provider or remote computing service to preserve records for ninety days pending a court order;
- (16) Add language to conform various sections to federal law;
- (17) Make technical changes for clarity, style, and conformity; and
- (18) Change the effective date to upon approval.



As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 965, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 965, S.D. 2, H.D. 1, C.D. 1.

Respectfully submitted on behalf  
of the managers:

ON THE PART OF THE HOUSE

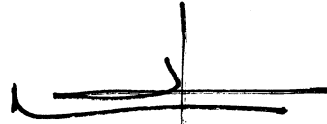


SYLVIA DUKE, Co-Chair



RYAN I. YAMANE, Co-Chair

ON THE PART OF THE SENATE



COLLEEN HANABUSA, Chair



BRIAN T. TANIGUCHI, Co-Chair



