

LINDA LINGLE
GOVERNOR



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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

February 21, 2008

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

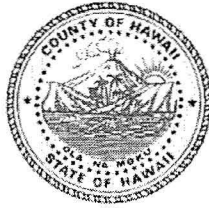
HOUSE BILL NO. 96, HD 2

COMMITTEE ON JUDICIARY

We oppose this bill. Our Motor Carrier Safety officers cannot enforce this bill in Chapter 286 Section 1. (a) and (b) because we cannot verify the most recent proof of alcohol and controlled substance test results at the weigh stations. The driver might show a negative test result that is old when he or she had a positive test result the day before. Also, random testing is only requiring 50% of the drivers to be tested yearly in the company.

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Harry Kim
Mayor



Michael R. Ben, SPHR
Director of Human Resources

Ronald K. Takahashi
Deputy Director of Human Resources

County of Hawai'i Department of Human Resources

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February 21, 2008

The Honorable Tommy Waters, Chair
And Members of the Committee on Judiciary
House of Representatives
State Capitol
Honolulu, HI 96813

Dear Chairman Waters and Members of the Committee:

Re: HB 96, HD 2 Relating to Government

I am Michael R. Ben, Director of Human Resources for the County of Hawai'i. We have approximately 144 employees who drive commercial motor vehicles and who are subject to Title 49, Code of Federal Regulations, Section 382.305.

HB 96, HD 2 use of the term "*proof of the most recent alcohol and controlled substance test,*" is troublesome because of the following.

First, because we test for alcohol and controlled substances on a random basis, an employee's "most recent" test could have occurred several years ago. Is this acceptable as "most recent?" Also, conceivably, an employee, while subject to random testing, may have never been randomly tested because the employee's "number" never came up for testing. All our employee would have is the result of the employee's pre-employment controlled substance test.

Next, how will the enforcing agency determine that the proof offered by the driver is in fact, the "most recent" test result?

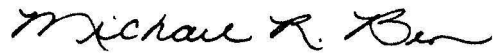
Third, because pre-employment alcohol tests are not authorized by Title 49 Code of Federal Regulations, and random alcohol tests are just that, a driver may never have had an alcohol test prior to being asked to provide proof.

The Honorable Tommy Waters, Chair
And Members of the Committee on Judiciary
February 21, 2008
Page 2 of 2

Unless HB 96 HD 2 is further clarified on these matters I have just raised, I would ask that HB 96, HD 2 be tabled.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Michael R. Ben".

Michael R. Ben, SPHR
Director of Human Resources

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DEPARTMENT OF HUMAN RESOURCES

CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET 10TH FLOOR • HONOLULU, HAWAII 96813
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MUFI HANNEMANN
MAYOR



KENNETH Y. NAKAMATSU
DIRECTOR

February 21, 2008

The Honorable Tommy Waters, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii

Dear Chair Waters and Members of the Committee:

I am Ken Y. Nakamatsu, Director of Human Resources, City and County of Honolulu. House Bill 96, House Draft 2 proposes to require that commercial driver licensees possess proof of their most recent alcohol and controlled substance test while operating a commercial motor vehicle. We would like to offer our comments regarding this bill.

First, the City shares with those who have introduced and supported this bill the concerns about the tragic effects drug and alcohol use may have on employees and the public—particularly when the employees involved are operating large commercial motor vehicles. Accordingly, the City has been testing commercial motor vehicle drivers for drugs and alcohol under the federally required testing program since 1995. Although we are committed to that testing program, we have concerns about administering the requirements under the bill.

Our major concern is that the test results the drivers are required to keep may no longer be available or may not exist. The reason for this is that random testing, by its nature, does not mandate that each driver will be tested—only that each has the potential for being tested whenever selections for testing are made. Accordingly, it is possible that a driver may not yet have been tested under the random testing provisions of the Federal Regulations. In addition, since the recordkeeping requirements under the regulations only mandate that negative test results be kept for one year, it is possible that drivers who were tested over a year ago may be unable to obtain a copy of the test result as it may have been destroyed.

Thank you for the opportunity to provide comments on H.B. 96.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Nakamatsu".

KEN Y. NAKAMATSU
Director of Human Resources

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DEPARTMENT OF CUSTOMER SERVICES
CITY & COUNTY OF HONOLULU
DIVISION OF MOTOR VEHICLE, LICENSING AND PERMITS
ADMINISTRATION
P.O. BOX 30300
HONOLULU, HAWAII 96820-0300

MUFI HANNEMANN
MAYOR



JEFF J. COELHO
DIRECTOR

DENNIS A. KAMIMURA
LICENSING ADMINISTRATOR

February 19, 2008

The Honorable Tommy Waters, Chair
and Committee Members
Committee on Judiciary
House of Representatives
State of Hawaii
State Capitol, Room 302
Honolulu, Hawaii 96813

Dear Chair Waters and Committee Members:

Subject: H.B. No. 96 H. D. 2, Relating to Government

The City and County of Honolulu has no objections to the intent of H.B. No. 96 H.D. 2 which would require commercial driver licensees to provide proof of their most recent alcohol and controlled substance tests.

Since the federally required drug testing is random, there is no definite period of time when a person with a CDL will be tested. If it is the intent of the Legislature that a person with a CDL should be periodically tested, we recommend that a new section be added to this bill requiring periodic testing.

If the bill is amended to require periodic testing, Section 1 of the bill should be amended by deleting the specific reference to only random testing pursuant to Title 49 Code of Federal Regulations Section 382.305.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis A. Kamimura", is written over a faint, larger version of the same signature.

DENNIS A. KAMIMURA
Licensing Administrator

DAK:bk

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CHARMAINE TAVARES
Mayor



LYNN G. KRIEG
Director

LANCE T. HIROMOTO
Deputy Director

COUNTY OF MAUI
DEPARTMENT OF PERSONNEL SERVICES

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February 20, 2008

The Honorable Tommy Waters, Chair
and Members of the Committee on Judiciary
House of Representatives
State Capitol
Honolulu, HI 96813

Dear Chair Waters and Members of the Committee:

RE: H.B. 96, H.D.2, Relating to Government

I am Lynn G. Krieg, Director of Personnel Services for the County of Maui, testifying against H.B. 96, H.D. 2.

While we are in favor of the bill's intent to promote the safe operation of commercial vehicles, we do not believe this proposed legislation is the proper method to attain this goal.

The proposed language appears to assume that all commercial drivers are tested for alcohol and controlled substances on a regular basis, whatever the intervals may be. In reality, our employees who drive commercial motor vehicles and who are subject to Title 49, Code of Federal Regulations, Section 382.305, are tested for alcohol and controlled substances on a random basis. As such, some employees may get tested on every random draw while another employee may never get tested; or there may be several years between tests. Because of the random testing, there would be no way for anyone to confirm that the documents presented by a driver are in fact the "most recent" test results.

Based on the foregoing, we believe that the proposed legislation is not enforceable as written. As such, we ask that it be tabled.

Sincerely,

LYNN G. KRIEG
Director of Personnel Services

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February 21, 2008

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON JUDICIARY
ON HB 96 HD-2, RELATING TO GOVERNMENT**

Thank you Chair Waters committee members. I am Gareth Sakakida, Managing Director of the Hawaii Transportation Association which has 360 transportation related members throughout the state of Hawaii.

HTA understands and supports the intent of this measure.

However, it is possible that a driver may have never been tested for alcohol or controlled substance test as required by Title 49, CFR, Part 382.305 (random testing), or that a test may be years old.

In fact, it is possible that a driver has never had an alcohol or controlled substance test because at the inception of these tests there was no requirement to test drivers who were already driving at a company. Both tests now require pre-employment tests, but there are exceptions which include "participation" in a random test program.

HTA does support concepts to remove drivers who test positive and proposed a bill in 2005 to try and get drivers who skirt the testing procedures by leaving the employer prior to a random test to avoid such a process and goes to work for another motor carrier. That driver remains untreated and is a threat to all on the road.

Our proposal provided for the suspension of the driver's CDL so the driver could not drive again until the successful completion of the rehabilitation program.

Add new 286-240 (k), Amend 286-241.4 (a)

286-240 (k) A person is disqualified from driving a commercial motor vehicle when the driver tests positive for a controlled substance or alcohol test provided under 49 Code of Federal Regulations, Part 382, Subpart C. The disqualification shall be in effect until the driver has met the requirements of 49 Code of Federal Regulations, Part 40, Subpart O.

286-241.4 (a) The examiner of drivers may suspend, revoke, or cancel any commercial driver's license or permit without a hearing when the examiner of drivers has probable cause to believe that the licensee is disqualified under section 286-240 (c) through (h) and (k) .

Thank you.

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