



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of Barry Fukunaga
Chief of Staff to the Governor

Before the

Senate Committee on Judiciary and Labor

Friday, February 22, 2008
10:00 AM

SB2081 SD1

Senator Taniguchi and Members of the Committee:

The Office of the Governor provides written comments opposing SB2081 SD1. The procedures required by this bill will bring tension and inconsistency into the pardon process rather than increase transparency and oversight.

SB2081 SD1 proposes to enact procedures for the pardon process and require the Governor to give 30-days notice of intent to pardon. Under this proposal, the Governor would be required to forward pardon applications to either the Hawaii Paroling Authority or the Judiciary for review and recommendation. It also would require the Governor to provide public notice justifying each pardon.

Currently, procedures are already in place for reviewing and recommending applicants for pardon. When an application is filed with either the Governor's Office or the Paroling Authority, the Hawaii Paroling Authority is assigned to investigate the case and provide all information pertaining to the applicant in a report to the Parole Board. The Parole Board then reviews the case and provides a recommendation. The case is then sent to the Director of Public Safety, who will review the findings and either agree or disagree with the recommendation. Then all information is forwarded to the Attorney General's Office where they conduct an in-depth, independent investigation of the applicant, and provide a recommendation after reviewing all available information. The packet of information from both the Hawaii Paroling Authority and the Attorney General's Office is then given to the Governor for review.

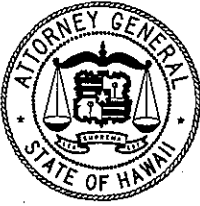
The procedures outlined above already ensure that the process has internal oversight. More importantly, these procedures are consistent and ensure a fair review.

The procedures outlined in SB2081 SD1 will unnecessarily create inconsistency and lessen internal oversight by segregating applicants and applications into two distinct pools reviewed by two different branches of government—with the Parole Authority reviewing those sentenced or paroled, and the Judiciary reviewing those on probation. Not only would this proposal reduce the importance of the Office of the Attorney General's independent investigations, it would also allow an agency that has little experience in pardon reviews to be a central part of the process.

Additionally, pardons are usually sought by those seeking jobs that require a clean record. Pardons provide hope to those with past mistakes, and are a chance for them to fully reintegrate back into society to become productive members of our State. By requiring the Governor to provide a public notice 30 days prior to issuing pardons, the Legislature will make the pardon process divisive rather than rehabilitative.

Each individual is different and each case is decided on its own merits. Opening the pardon process up for public scrutiny prior to the issuance of a pardon will only create tension since the Governor cannot provide complete justification when decisions are rendered using confidential information not available to the public. Most importantly, in an attempt to scrutinize the Governor's pardon decisions through public notice, the applicant seeking pardon will also be subjected to public scrutiny, and possibly public castigation. This is undeserved, especially when the applicant is attempting to move forward with life and be a productive member of society. While the Office of the Governor is supportive of transparency and open government, pardon applicants are private citizens who should not be subjected to the level of public scrutiny that a public notice would put in place.

This proposal may end up hurting more than helping the pardon process and pardon applicants. We ask that you hold this bill in committee.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

S.B. NO. 2081, S.D. 1, RELATING TO THE HAWAII PENAL CODE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, February 22, 2008 **TIME:** 10:00 AM

LOCATION: State Capitol, Room 016
Deliver to: Committee Clerk, Room 219, 1 Copy

TESTIFIER(S): WRITTEN TESTIMONY ONLY.
(For more information, contact Darcy Kishida,
Deputy Attorney General, at 587-2978.)

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General opposes this bill.

The bill makes three substantive changes to the way pardon applications are processed by: (1) requiring the Governor to refer all pardon applications to either the Hawaii Paroling Authority (HPA) or the Judiciary for "a recommendation as to the granting or refusing of the pardon"; (2) requiring the Judiciary, a separate branch of government, to process pardon applications and issue recommendations to the Governor; and (3) requiring the Governor to give public notice "of an intention to issue a pardon," including "the reason for the pardon."

The changes proposed in the bill violate article V, section 5 of the Hawaii Constitution by impermissibly limiting the Governor's pardon power. The relevant portion of the Constitution provides that "[t]he governor may grant . . . pardons, after conviction, for all offenses, subject to regulation by law as to the manner of applying for the same." Under the Constitution, therefore, the Governor has the sole authority to process and consider pardon application for applicants "after conviction" with the Legislature limited to regulating only "the manner of applying" for pardons. In other words, the Legislature may regulate how one applies for a pardon, but may not further legislate what happens after the application is received by the Governor.

Requiring that all pardon applications be referred to the HPA or the Judiciary for recommendations is unconstitutional because it takes away the Governor's power to decide pardon applications on his or her own without such referrals. Although in practice the Governor commonly refers pardon applications to the HPA, in fact it is the Governor's prerogative to do so; referrals are not required. Section 353-72, Hawaii Revised Statutes (HRS), the statute currently in place that deals with pardons, recognizes the Governor's discretion in this area by making referrals discretionary, not mandatory. The bill's public notice requirement suffers the same constitutional infirmity because it impermissibly limits the Governor's authority to process and consider pardon applications in the way the Governor sees fit.

The bill's requirement that the Judiciary process certain pardon applications provides an additional constitutional concern. The Judiciary is a completely separate branch of government not constitutionally authorized to review or process pardon applications. Again, the current statutory scheme is constitutionally valid in this regard because section 353-72, HRS, names only the Department of Public Safety (PSD) and the HPA as agencies that the Governor may refer pardon applications to. Both PSD and the HPA are in the executive branch, thereby avoiding any issues regarding constitutional separation of powers.

Accordingly, we respectfully request that this measure be held.

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 ALAKEA STREET, GROUND FLOOR
Honolulu, Hawaii 96813

ALBERT TUFONO
CHAIR

DANE K. ODA
MEMBER

ROY W. REEBER
MEMBER

MAX OTANI
A/ADMINISTRATOR

No. _____

**TESTIMONY ON SENATE BILL 2081, SD 1
RELATING TO THE HAWAII PENAL CODE**

HAWAII PAROLING AUTHORITY
Albert Tufono, Chairman

Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Friday, February 22, 2008; 10:00 a.m.
State Capital, Conference Room 016

Chair Taniguchi, Vice Chair Hee and Members of the Committee:

The Hawaii Paroling Authority (HPA) does not support Senate Bill 2081, SD1, relating to the Hawaii Penal Code.

This bill as written will mandate the judicial branch of government to investigate and

compile a report for an executive branch decision. In fiscal year 2007, HPA received 66

pardon applications for investigation and report. While this bill, if passed, would reduce the

pardon workload for HPA, there are concerns that the consistency of the investigations,

reports and recommendations may be compromised if it is being conducted by multiple

agencies.

Also of concern is the "Notice of intention to pardon" contained in this bill. A public

notice period of at least 30 days would delay the pardon process further and begin to remove

the discretionary decision-making authority that is afforded to the Governor.

We thank you for this opportunity to testify on this important matter.

February 20, 2008

Committee on Judiciary and Labor
Senator Brian Taniguchi, Chair
Senator Clayton Hee, Vice Chair
State Capitol
415 South Beretania Street
Honolulu, HI 96813

Dear Chair Taniguchi, Vice Chair Hee and Members of the Committee,

I am writing in support of Senate Bill 2081. I am a resident of Ewa Beach, born and raised on Oahu. My family has resided in Hawaii for generations and we are dismayed at the increase in crime of late. I was surprised to learn that the Governor was not already required to give public notice of intended pardons. By mandating that the Governor provide adequate public notice we would be putting into effect something that should have been done long ago. The citizens who live in the communities where these inmates are released have a right to know who is being released and the reasoning behind the decision.

If the evidence supports the pardon of a person then there should be no reason to not provide such proof to the public. If there are some areas of disputable logic, that is all the more reason for providing for public access and review. This would provide the public an opportunity to weigh in and offer a full range of thought on the pardon at hand. If clear that a pardon is warranted, the community could feel safe in a well reviewed and carefully weighed decision.

Again I strongly support this bill and ask for your support in taking this bill to the next step for the good of all citizens of our great State of Hawai'i. Thank you for the opportunity to submit testimony.

Sincerely,

Amanda Strauser
Citizen of Ewa Beach, Oahu, Hawai'i