



**EXECUTIVE CHAMBERS**  
HONOLULU

LINDA LINGLE  
GOVERNOR

Testimony of Barry Fukunaga  
Chief of Staff to the Governor

Before the

Senate Committee on Public Safety

Tuesday, January 29, 2008  
2:45 PM

SB2081

Senator Espero and Members of the Committee:

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

S.B. 2081 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 S.B. 2081 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.

Respectfully submitted,

BARRY FUKUNAGA  
Chief of Staff to the Governor

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
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**TESTIMONY ON SENATE BILL 2081  
RELATING TO THE HAWAII PENAL CODE**

by  
Clayton A. Frank, Director  
Department of Public Safety

Senate Committee on Public Safety  
Senator Will Espero, Chair

Tuesday, January 29, 2008; 2:45PM  
State Capitol, Conference Room 225

Senator Espero, Senator Nishihara and Members of the Committee:

The Department of Public Safety (PSD) opposes Senate Bill 2081, which seeks to amend the current procedures outlined in Chapter 706 of the Hawaii Revised Statutes as it relates to the pardons process.

As written, SB 2081 restricts the Governor's ability to consider and/or grant a pardon without receipt of information, reports, and recommendations of either the Hawaii Paroling Authority or the Judiciary. This is contrary to the historical trust and authority that has been vested with the Governor for more than fifty (50) years.

This measure will also frustrate legitimate government operations, add to the State's cost of processing pardon applications, and unnecessarily delay the pardons process. Currently, the pardons process can take more than one year from the date of receipt of the application to the date a decision is rendered by the Governor. Further delaying the pardons process for thirty days serves no legitimate public purpose as news print organizations and television stations are routinely provided with information regarding approved pardons.

Thank you for the opportunity to provide testimony on this matter.

LINDA LINGLE  
GOVERNOR



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TESTIMONY ON SENATE BILL 2081  
RELATING TO THE HAWAII PENAL CODE

HAWAII PAROLING AUTHORITY  
Albert Tufono, Chair

Committee on Public Safety  
Senator Will Espero, Chair  
Senator Clarence K. Nishihara, Vice Chair

Tuesday January 29, 2008; 2:45 p.m.  
State Capital, Conference Room 225

Chair Espero, Vice Chair Nishihara and Members of the Committee:

The Hawaii Paroling Authority (HPA) does not support Senate Bill 2081, 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.