

SB 2052

Measure Title:
RELATING TO FIREWORKS

Report Title:
Fireworks; State Fire Council; Surcharge

Description:
Increases the fee to purchase consumer fireworks. Generally, increases the penalty for fireworks violations. Transfers all proceeds collected from fireworks violations to the state. Requires a study on the negative effects of the use of fireworks in the State. Includes religious events in the definition of "cultural". Imposes a graduated fireworks fee system to discourage large purchases of fireworks.

Linda Lingle
Governor



Darwin L.D. Ching
Director

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
State Fire Council
830 Punchbowl Street
Honolulu, Hawaii 96813

January 22, 2010

The Honorable J. Kalani English, Chair
Committee on Transportation, International and
Intergovernmental Affairs
The State Senate
State Capitol, Room 205
Honolulu, Hawaii 96813

The Honorable Will Espero, Chair
Committee on Public Safety and Military Affairs
The State Senate
State Capitol, Room 207
Honolulu, Hawaii 96813

Dear Chairs English and Espero:

Subject: S.B. 2052 Relating to Fireworks

I am Kenneth G. Silva, Chair of the State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD support the measures in S.B. 2052, which proposes to increase the fee to purchase consumer fireworks and the penalty for fireworks violations; transfers proceeds collected from fireworks violations to the state; includes religious events in the definition of "cultural"; requires a study on the negative effects of the use of fireworks in the state; and imposes a graduated fireworks fee system to discourage large purchases of fireworks. However, we have concerns regarding requiring the SFC to conduct a study on the negative effects of fireworks use in the state.

Fireworks permit and import license fees have not increased for ten years, however, the cost of services provided by fire, police, and emergency medical services personnel continues to increase. During New Year's, the Honolulu Police Department responded to 1,361 incidents in 2008-2009 and 1,840 in 2009-2010. Statewide, fire departments responded to 33 and 106 fireworks-related incidents for the same periods, and fireworks-related injuries totaled 79 for 2008-2009 and 112 for 2009-2010. In addition,

The Honorable J. Kalani English, Chair
The Honorable Will Espero, Chair
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the counties bear the cost and responsibility of cleaning the streets and parks that are littered with fireworks debris. Along with the fire departments' responsibility to ensure the public's safety, the amount of fireworks display permits and accounting of the pyrotechnic inventory items have increased.

The SFC strongly opposes the requirement to conduct a study to determine the negative effects from the use of fireworks in the state. The SFC consists of only one part-time person funded by the State Department of Labor and Industrial Relations, to which the SFC is administratively attached. In addition, the SFC is a member of the State Building Code Council and participates in the state building code adoption process; coordinates statewide fire training and data collection; and corresponds with national organizations on statewide fire issues.

Chapter 132D-17, Hawaii Revised Statutes states that no county may enact stricter laws or rules relating to the present fireworks law. The SFC believes each county should be allowed to determine the potential hazards that fireworks present and the benefit to their community by further restricting fireworks use based on each county's needs and resources.

The SFC and the HFD request your committee's support on the passage of S.B. 2052, with the deletion of the requirement for the SFC to conduct a study of costs incurred by public agencies responding to fireworks-related incidents. Attached is a report from the City and County of Honolulu outlining costs incurred by its emergency services personnel from October to December 2009.

Should you have any questions, please call SFC Administrator Socrates Bratakos at 723-7151.

Sincerely,



KENNETH G. SILVA
Chair

KGS/LR:bh

Attachment



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813-3065 / TELEPHONE 547-7000

January 25, 2010

Joint Committee on Public Safety & Military Affairs, and
Transportation & Intergovernmental Affairs
The Senate
State of Hawaii

Testimony of
Honolulu City Councilmember Nestor Garcia
Senate Bill 2052
Regular Session 2010

Chair Espero, Chair English, and members of the Joint Committee:

Thank for you this opportunity to offer testimony in general support of SB 2052. I am grateful to the introducers of this measure for attempting to address this serious matter head on.

According to Major Dave Kajihira of Honolulu Police Department District 3, which covers the area from Foster Village to Village Park, since October 1st, 2009, the district's officers have responded to nearly 600 complaints through the New Year or approximately 6-7 calls per day.

SB 2052 establishes a percentage surcharge on every sale of consumer fireworks to be paid by each wholesaler and retailer, and also establishes a graduated end-user usage fee in the attempt to discourage large purchases of fireworks. Additionally, while the bill allows each county that collected the fees to retain those moneys, SB 2052 also proposes the wholesale transfer of all proceeds collected from fireworks violations to the state. It is unclear as to what State's nexus is to this transfer of funds.

As an elected official and a resident of Waipahu, I share the public's, and your concerns and frustrations over the late night disturbances and join with Honolulu's Police Chief Louis Kealoha and Fire Chief Kenneth Silva in calling for a complete ban.

As you may or may not know, several years ago I lost a close relative to a fireworks related accident. Ever since then, I have tried, to no avail, to curtail some of the allowable activities under the State fireworks law. Please allow me this opportunity to clarify some of the issues as it pertains to enforcement of fireworks violations.

Currently, the permitted sale and distribution of fireworks is actually a State law codified as Hawaii Revised Statutes, Chapter 132D. This law, enacted in 1994, unilaterally placed the enforcement of fireworks violations on the counties, but limited the county's enforcement of fireworks to just aerial and display fireworks that "meets the definition of aerial device or consumer or display fireworks as defined by this section and contained in the regulations of the United States Department of Transportation as set forth in Title 49 Code of Federal Regulations." Anything that does not meet that definition is unenforceable by the police.

In speaking with both the Honolulu Police Department and the Honolulu Fire Department, it is my understanding that many of the loud, low booming, concussive sounds that keep us up at night are being created through the use of everyday household items such as dry ice, plastic beverage containers, metal coffee cans, and brake cleaner or air freshener fluids.

In one instance, the people who make these sounds do so by taping or welding a series of these cans together to form a tube. They then make a hole in the bottom of the tube for electronic ignition, spray brake cleaner or air freshener in the tube and ignite the vapors to create the loud "boom". In the other example, some will pack plastic beverage containers with dry ice, fill the container with a liquid, cap it then wait for the expanding carbon dioxide gas to burst open the container. Public safety personnel witnessed a new type of noise-making device this past holiday season – acetylene gas-filled balloons. Finally, some people actually compress sparklers together through tape or aluminum foil and ignite it to create an explosion.

It is currently not illegal for people to possess these items. It is therefore difficult for police to arrest persons for noise complaints unless they are caught in the act of spraying the aerosol into the tube and igniting it. In spite of that, I have also been working with the City's Office of Council Services attorneys and the Prosecuting Attorney's office in the hopes of crafting a new law that would prohibit the creation of this low decibel booming sound and possession of these homemade devices.

The current State law also prohibits the counties from enacting any stricter law, to include the total ban on fireworks. It states:

"Notwithstanding any other law to the contrary, no county shall enact ordinances or adopt any rules regulating fireworks or articles pyrotechnic, except as required in this chapter, that is inconsistent with or more restrictive than, the provisions of this chapter."

In 1995, 1997, 1999, 2000, 2001, and most recently in 2005, the Honolulu City Council submitted resolutions to the State Legislature requesting the authority to be able to adopt laws more stringent than those imposed by State Law. Councilmembers Djou, Okino, Kobayashi, Cachola, Dela Cruz and I helped introduce the latest measure. However, in each case, our request for more local authority was denied by the Legislature.

Finally, and probably most important, police officers have told me that it is very difficult to enforce the current State fireworks law on aerial and display fireworks as written because the court's standard for arrest and conviction is that the offender must actually be caught lighting a fuse to an illegal explosive device.

Police are quite aware of the public's continuing concerns, but when they do move in, there are no witnesses, and the perpetrators have long fled the scene. Nevertheless, our HPD officers continue to patrol where we all believe the problem areas are when it comes to locating the source of the problem.

Testimony of Councilmember Nestor Garcia
Senate Bill 2052
January 25, 2010
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Perhaps the better course of action is to allow each county the ability to enact ordinances that can be more restrictive than current State law. In this manner, each county will be able to take appropriate and effective actions for their residents. Those with smaller populations could choose to retain the current arrangements, while those counties with greater density could choose to ban it altogether.

Thank you for this opportunity to provide testimony.

Nestor R. Garcia
Councilmember
District 9 – Makakilo, Mililani, Waipahu

CHARMAINE TAVARES
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JEFFREY A. MURRAY
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DEPUTY CHIEF

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DEPARTMENT OF FIRE AND PUBLIC SAFETY

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January 22, 2010

The Honorable Will Espero, Chair
Committee on Public Safety and Military Affairs
The State Senate
State Capitol, Room 207
Honolulu, Hawaii 96813

The Honorable J. Kalani English, Chair
Committee on Transportation, International, and Intergovernmental Affairs
The State Senate
State Capitol, Room 205
Honolulu, Hawaii 96813

Dear Chairs Espero and English:

Subject: S.B. 2052 Relating to Fireworks

I am Jeffrey A. Murray, Fire Chief of the County of Maui, Department of Fire & Public Safety (MFD) and a Member of the State Fire Council (SFC). The MFD and the SFC support the measures in S.B. 2052, which proposes to increase the fee to purchase consumer fireworks, generally, increase the penalty for fireworks violations, transfer all proceeds collected from fireworks violations to the state, include religious events in the definition of "cultural", and impose a graduated fireworks fee system to discourage large purchases of fireworks. However, we have concerns about requiring the SFC to conduct a study on the negative effects of the use of fireworks in the State.

Fireworks permit and import license fees have not increased for ten years, even though the cost of services provided by fire, police, and emergency medical personnel continues to increase. Statewide, fire departments responded to 33 and 106 fireworks-related incidents, and fireworks injuries totaled 79 for 2008-2009 and 112 for 2009-2010. In addition, the counties bear the cost and responsibility of cleaning the streets and parks that are littered with fireworks debris. Along with the fire departments' responsibility to ensure the public's safety, the number of fireworks display permits and proper accounting of the pyrotechnic inventory items have increased.

The Honorable Will Espero, Chair
Committee on Public Safety and Military Affairs
The Honorable J. Kalani English, Chair
Committee on Transportation, International, and Intergovernmental Affairs
January 22, 2010
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The SFC strongly opposes the requirement to conduct a study to determine the negative effects from the use of fireworks in the State. The SFC's staff consists of only one part-time person funded by the State Department of Labor and Industrial Relations, to which the SFC is administratively attached. In addition, the SFC is a member of the State Building Code Council and participates in the state building code adoption process; coordinates statewide fire training and data collection; and corresponds with national organizations on statewide fire issues.

Chapter 132D-17, HRS states that no county may enact stricter laws or rules relating to the present fireworks law. The SFC believes each county should be allowed to determine the potential hazards fireworks present and the benefit to their community by further restricting fireworks use based on each county's needs and resources.

The MFD and the SFC request your committee's support on the passage of S.B. 2052, with the deletion of the requirement for the SFC to conduct a cost study of public agency response to fireworks incidents.

Should you have any questions, please call SFC Administrator Socrates Bratakos at 723-7151.

Sincerely,



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Fire Chief

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Improving Life

One Breath at a Time

Founded in 1904, the
American Lung Association
includes affiliated associations
throughout the U.S.



**TO: Senate Committee on Public Safety and Military Affairs
Senate Committee on Transportation, International and
Intergovernmental Affairs**

FOR: Hearing S cheduled for 1:45 pm, Monday, January 25, 2010

**RE: TESTIMONY IN SUPPORT OF THE INTENT OF SB 2052
RELATING TO FIREWORKS**

Chairs Espero and English, Vice Chairs Bunda and Gabbard, and
Committee Members:

The American Lung Association in Hawaii supports any that measure seeks to reduce the impact of fireworks. However with over 175,000 people in Hawaii, or nearly 13 percent of our population suffering from some type of lung disease, that is made worse by exposure to the particulate smoke from fireworks, **we believe a ban on consumer fireworks would do far more to protect our collective health** than would a surcharge and increased fees. Assuring the cleanest air for everyone in Hawaii is important, especially with the recent increase in volcanic activity that compounds the danger of fireworks.

Hawaii has the second highest rate in the nation for childhood asthma and many adults, especially the elderly, suffer from chronic lung disease including emphysema and COPD (Chronic Obstructive Pulmonary Disease). Even people who do not have lung problems often report eye, throat and lung irritation on New Year's Eve.

With so many people experiencing breathing problems directly related to fireworks, the American Lung Association in Hawaii strongly supports any measure that will help clear the air.

It is time to act responsibly and stop this willful disregard for the health or our fellow citizens, especially those who might be unable to speak for themselves – our children and the elderly. Specific action to ban fireworks is what is called.

Respectfully, submitted,

Jean Evans, MPH
Executive Director
American Lung Association in Hawaii



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January 25, 2010

Chairs & Committee Members:

Testimony to: Senate Committee on Public Safety and Military Affairs
Senator Will Espero, Chair
Senator Robert Bunda, Vice Chair

Senate Committee on Transportation, International & Intergovernmental Affairs
Senator J. Kalani English, Chair
Senator Mike Gabbard, Vice Chair

By: Richard C. Botti
Lauren Zirbel
LISH Represents both retailers and wholesalers of fireworks in Hawaii

Re: SB 2052 RELATING TO FIREWORKS
SB 2053 RELATING TO FIREWORKS

Chairs & Committee Members:

We oppose the passage of both SB 2052 and SB 2053. With that said, we would like to proceed with the reasons why.

SB 2052 is essentially a total ban on fireworks. If the measure were to become law, the costs of what is now legal would be so high that no wholesaler or retailer could or would stay in the fireworks business. No consumer would pay the price that would have to be charged for fireworks under the fee schedule. Additionally, if enacted into law SB 2052 would encourage those who want to continue to celebrate with some kind of fireworks, to create their own fireworks and only pay for the supplies needed to construct their devices. We can go so far as to name them. Under federal law they would be: IED's or improvised explosive devices.

Current law already prohibits anything that can fly higher or wider than twelve feet from the ground, calling them aerial fireworks. The police complain that they can't enforce the law because they don't see the act being committed. If that be the case under existing law where they are already illegal, a new law essentially banning everything legal by pricing everything out of the market, is not going to reduce the challenge, but rather create chaos and an enforcement nightmare. Enforcement would really become impossible.

Further, the state would collect less revenues than they currently collect, which we estimate to be above \$2 million a year in license fees, permit fees, and the GET taxes at all levels.

SB 2053 as drafted, doubles the current fees collected for firecracker permits. This measure will dramatically reduce, if not entirely eliminate, the number of permits that will be obtained. Consumers are price conscious. When prices rise on any commodity, whether through government taxes or other means, or through other price pressures, consumer will do the following in this order:

- Seek ways to substitute legally one similar product for another if available; or

- Seek ways to get the product through other legal means without paying the higher price; or
- Seek to get that same product even if it has to be obtained illegally.

Since SB 2053, if enacted into law doubles the permit fee on firecrackers, it is a certainty that no retailer will invest in any firecracker inventory. None will be available for sale. So, SB 2053 guarantees that fewer permits or no permits will be purchased, revenue obtained from the sales will drop probably to zero, and less money or no money will be available for enforcement.

SECTIONS 1 and 2 of SB 2053 do not address the illegal aerial issue, but are attempts to generate more revenues from those that abide by the law to use for enforcement against those that violate the law by importing, selling, and/or using illegal aerial devices. We suggest that the following language that would be added under SECTION 3. Section 132D-11(a) stating that "The fees shall also be used by the county law enforcement agencies for law enforcement purposes relating to this chapter." will accomplish the goal of supporting the police departments in their efforts to enforce what is already illegal.

Currently, the fees go into the county general fund. They are not dedicated for enforcement. We have supported dedicating those funds for enforcement for the past twelve years.

Selling illegal aerials, the black marketing of fireworks is very profitable. No laws to comply with, so long as you don't get caught, no taxes to pay, and you are selling excitement. Now, enforcement has been minimal with law enforcement saying they can't enforce the law because they can't catch the user in the act, or with the illegal product.

In summation, excluding those individuals that want to ban everything, the issue is not the legal fireworks that are causing the problem, but rather illegal aerials. They are already banned. Eliminating what is currently legal for a maximum time period of twelve hours a year will not stop what is already illegal, but will create a situation that:

- Will promote the sale of all fireworks underground, where:
 - Government will have no control, receive no fees or taxes;
 - Current jobs that are related to fireworks sales will be eliminated creating unemployment;
 - Create a legal issue of banning freedom of religion and/or culture events;
 - Increase costs of law enforcement; and
 - Consumers will build their own IED's (Improvised Explosive Devices).

How can we predict the above? Look at what is happening with illegal drugs, liquor and tobacco use by minors.

So, what's the solution?

- Enforce the laws that we have; and
- Enhance existence laws with better enforcement tools.

How?

- Amend forfeiture laws to include the forfeiture of personal property involved in the importation, storage, and/or sale of illegal fireworks;
- Create a method for anonymous calls to government of violations where the person reporting will receive a reward; and
- Provide a means for law enforcement to issue citations to violators of any of the fireworks laws.

The law is not broken. It is enforcement of the law that is broke. A ban will create another set of problems that are sure to be far worse. Let's fix what's broken.

FROM: MAILINGLIST@CAPITOL.HAWAII.GOV [MAILTO:MAILINGLIST@CAPITOL.HAWAII.GOV]
SENT: FRIDAY, JANUARY 22, 2010 12:25 PM
TO: PSM TESTIMONY
CC: REIZISS@HAWAIIANTEL.NET
SUBJECT: TESTIMONY FOR SB2052 ON 1/25/2010 1:45:00 PM

TESTIMONY FOR PSM/TIA 1/25/2010 1:45:00 PM SB2052

CONFERENCE ROOM: 224
TESTIFIER POSITION: COMMENTS ONLY
TESTIFIER WILL BE PRESENT: NO
SUBMITTED BY: STANN W. REIZISS, PH.D.
ORGANIZATION: INDIVIDUAL
ADDRESS: OAHU - HAWAII
PHONE: 230-8199
E-MAIL: REIZISS@HAWAIIANTEL.NET
SUBMITTED ON: 1/22/2010

COMMENTS:
COMMENTARY ON SB 2052:

FOR A PAYOFF OF \$185,825.00 THE CITY OF HONOLULU AND THE STATE OF HAWAII ARE BLATANT SPONSORS OF TERRORISM. THAT'S THE MONETARY TAKE ON THE SALE OF 7433 FIREWORKS PERMITS AT \$25 A POP.

CITIZENS ARE NOT LOOKING TO SHIFT THE RECIPIENT OF FUNDS FROM CITY TO STATE; RATHER WE ARE SEEKING TO ELIMINATE THIS SERIOUS RECURRING PROBLEM AND PROVIDE ENFORCEMENT OF THE LAW.

AS A RESULT, THIS NEW YEAR'S EVE ON OAHU THERE WERE 16 INCIDENTS OF NEW YEARS EVE RELATED FIREWORKS INCENDIARY DISTURBANCES, RANGING FROM STRUCTURAL TO RUBBISH FIRES.

IN ADDITION THERE WERE NUMEROUS FIREWORKS CAUSED SEVERE INJURIES.

THIRTY SEVEN MILLION, ONE HUNDRED SIXTY FIVE THOUSAND (37,165,000.00) ORDNANCE EXPLOSIONS CREATED HAVOC IN OUR RESIDENTIAL NEIGHBORHOODS (7433 PERMITS X 5000 FIREWORKS), AND THAT IS ONLY COUNTING THE LEGALLY PERMITTED EXPLOSIONS! THESE DETONATIONS CAUSED PTSD FLASHBACKS, COWERING PETS AND WILDLIFE, TRAUMATIZED INFANTS AND ELDERLY, SEVERE BREATHING PROBLEMS AND UNSIGHTLY BURN MARKINGS AND LITTER.

ADDED TO THAT WERE MANY CASES OF "COLLATERAL" DAMAGE.

MY \$900 KAMAKA UKULELE ALONG WITH SEVERAL GLASSES VIBRATED OFF A SHELF AND SMASHED ON OUR TILE FLOOR WHEN A PARTICULARLY EGREGIOUS AREAL BOMB EXPLODED. OUTSIDE, THE CLUELESS CULPRITS GUFFAWED AT THE HILARITY OF THE MINDLESS EVENT.

IF NEW YEAR'S EVE FIREWORKS ARE INTENDED TO DRIVE AWAY EVIL SPIRITS, THEY ARE DOING THE EXACT OPPOSITE.

ALL THE EVIDENCE CLEARLY SHOWS THAT FIREWORKS ATTRACT AND FEED EVIL SPIRITS. YET ANOTHER EXAMPLE OF UNINTENDED CONSEQUENCES.

SO LET'S KEEP THE ALOHA SPIRIT ALIVE AND WELL BY LETTING THE PYROTECHNIC PROFESSIONS DAZZLE US AT EVENTS THAT CALL FOR FIREWORKS AND KEEP IT OUT OF THE HANDS OF THE AMATEURS.

THANK YOU FOR HELPING TO RESOLVE THIS HEALTH, AND SECURITY PROBLEM.

From: Barnes, Mark [mailto:Mark.Barnes@marriott.com]

Sent: Sunday, January 24, 2010 8:53 PM

To: PSM Testimony

Cc: Sen. Will Espero; espero2 - Brandon

Subject: SB 2052 and SB 2053 testimony

Since I cannot personally attend the hearings for SB 2052 and SB 2053 I am submitting testimony in support of both. (Monday Jan. 25th 1:45pm).

Simply put, it does not take much to realize that the use of fireworks, both legal and illegal have spun out of control in Hawaii. Rather than a one day/evening celebration on July 4th or New Years Eve, we are now forced to live with fireworks beginning in early October though December each year. Both the legal and illegal fireworks (aerials and explosions) cause the following:

- **Disrespects of the Christmas Holiday. How can this be a "cultural" activity when explosions are going off for months and on Christmas eve and Christmas day?**
- **Intrudes on the "quiet enjoyment" of our neighborhoods**
- **Terrorizes our pets**
- **increases lung hazards and other health risks**
- **is a danger to our homes as a fire hazard.**
- **Forces us to become prisoners in our own homes.**

It's one thing to allow fireworks for the holidays, but size and type of fireworks that are now entering our islands are a clear and present danger to us all. No one can argue this.

Enforcement is difficult but increasingly necessary. Neighbors won't call the police on their neighbors for fear of reprisals.

We have called the police numerous times during these periods only to be told that there is not much that can be done. The police are as frustrated as we are! Much stiffer penalties are needed, and resources dedicated to enforcement. Without those resources, the passage of new laws are meaningless.

Further, a complete investigation as to how these explosives are reaching our islands is needed. If these materials can get into the islands, what is to stop even worse explosives from coming into Hawaii?

On behalf of many neighborhoods (I live in Waikele) , we ask that you please address this issue.

Mark Barnes

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808-216-3557 cell