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**THE HONORABLE CLAYTON HEE, CHAIR  
THE HONORABLE MAILE S.L. SHIMABUKURO, VICE CHAIR  
SENATE COMMITTEE ON JUDICIARY AND LABOR  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawai'i**

Tuesday, January 31, 2012

RE: H.B. 245, H.D. 1; RELATING TO WITNESSES.

Good morning, Chair Hee, Vice Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney submits the following testimony in support of H.B. 245, H.D. 1.

The purpose of this bill is to support and encourage returning out of state witnesses to fully participate in the prosecution of criminal case in Hawaii. In 1989, the legislature increased per diem for out-of-state witnesses; however, the amount has remained the same since, for almost twenty-two years. This amount is no longer sufficient to pay the personal expenses of out-of-state witnesses, such as lodging and food. Often these individuals are forced to take money out of their own pockets to cover necessary personal expenses when subpoenaed to return to the state as a witness in state court proceedings. Because the per diem amount has not been adjusted to keep pace with the cost of living in Hawaii, it has emerged as an economic "barrier" that either discourages or prevents an out-of-state witness from returning to testify against offenders due to economic considerations. Further, the Department of the Prosecuting Attorney finds that the per diem amount for witnesses that are required to travel to a different island within the State is also not sufficient to cover the witness' personal expenses when that witness is required to stay overnight.

This measure increases the amount of per diem for out-of-state witnesses from \$110 to \$145 per 24-hour day and increases the per diem for witnesses who must travel to another island within the State, an additional amount of \$90 per 24-hour day to the current \$55 per 24-hour day if that witness is required to stay overnight. Based on the 55 out of state witnesses that were returned in 2011 for a total of 227.25 per diem days the increased total cost of the increased per diem proposed in this bill is a modest \$6,817.50. While there were additional witnesses returned by Neighbor Island Prosecutors, the number (not currently available) is estimated to be small and will not increase the cost by any significant amount. While the aggregate effect of the increased per diem is negligible, the impact for individual witnesses is critically important. The enactment

of this measure may very well insure the ability to prosecute important cases, thus ensuring the safety of both our visitors and residents.

For the above cited reasons the Department of the Prosecuting Attorney strongly supports the passage of H.B. 245, H.D. 1. Thank you for this opportunity to testify.

**TESTIMONY BY KALBERT K. YOUNG  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR  
ON  
HOUSE BILL NO. 245, H.D. 1**

**JANUARY 31, 2012**

**RELATING TO WITNESSES**

House Bill No. 245, House Draft 1, raises the per diem rate for out-of-state witnesses from \$110 to \$145 and provides an additional \$90 per 24-hour day if an inter-island witness is required to stay overnight.

The Department of Budget and Finance primarily serves as the conduit for witness fee payments certified by the public prosecutor or county attorney for witnesses subpoenaed on behalf of the State and by the public defender for witness subpoenaed on behalf of the defendant. The FY 2013 requested funding level for witness fees totals \$1.89 million and does not include the proposed cost increases for reimbursements. If this proposal is approved, any increases in the recurring annual costs will need to be paid from the currently requested FY 2013 funding level for witness fees. In light of the State's continued challenges in funding the multitude of competing statewide needs, there is a distinct possibility that (assuming the funding appropriation stays at the current FY2013 funding level) if the per diem rate is increased, there could be insufficient appropriation to satisfy payment of witness fees within the fiscal year for which they are incurred. Should the requested funding level for witness fees prove to be insufficient as a result of increased cost requirements in this proposal, witness fee payments will be delayed until such time that sufficient appropriations are available.