



## TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-SIXTH LEGISLATURE, 2012

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### ON THE FOLLOWING MEASURE:

H.B. NO. 2751, H.D. 2, RELATING TO OFFENSES AGAINST PUBLIC ADMINISTRATION.

### BEFORE THE:

SENATE COMMITTEE ON  
PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

**DATE:** Thursday, March 15, 2012 **TIME:** 2:50 p.m.

**LOCATION:** State Capitol, Room 224

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Lance M. Goto, Deputy Attorney General

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Chair Espero and Members of the Committee:

The Department of the Attorney General (the "Department") has concerns about this bill and submits the following comments.

The purpose of this bill is to implement the Legislature's constitutional authority to take action against disorderly or contemptuous behavior committed before a legislative body.

On pages 2 and 3, the bill amends section 21-14, Hawaii Revised Statutes (HRS), to provide that a person shall be in contempt if the person does either of the following:

- (1) Recklessly engages in disorderly or contemptuous behavior during a hearing of an investigating committee, or session of the legislature or either house thereof, committed in the immediate view and presence of the investigating committee, legislature, or either house, and directly tending to interrupt the proceedings or impair the respect due to such proceedings and to the authority of the investigating committee, legislature, or either house; or
- (2) Creates a breach of peace or disturbance with intent to interrupt an investigating committee's proceedings or session of the legislature or either house thereof.

The Department has concerns about the use of undefined and subjective terms in the first type of prohibited conduct. The use of terms such as "disorderly" or "contemptuous," or the phrase "impair the respect due to such proceedings," may create unconstitutional content-based restrictions on free speech. For example, if by "disorderly and contemptuous" the bill would penalize loud condemning comments made toward legislators, but would not penalize loud

supportive comments made towards legislators, then a content-based restriction may be created, which would violate freedom of speech rights under the United States Constitution.

The Department is also concerned that the specified reckless state of mind may also infringe on a person's freedom of speech rights, particularly in legislative proceedings where individuals are encouraged to share their views on the various issues.

For the foregoing reasons, the Department recommends deleting the first form of contemptuous conduct that prohibits reckless behavior, and proceeding with the second.

On page 4, the bill sets out a process for summary contempt proceedings if the offense is committed in the immediate view and presence of the legislative body, or under such circumstances that the legislative body has knowledge of all the facts constituting the offense. In proceeding with summary contempt, the legislative body, by majority vote of the members present, would find the offender guilty and impose a fine and jail term.

The Department is very concerned about these summary contempt provisions. Although it is reasonable for the Legislature to remove a disruptive person, it does not appear that a legislative body would be the best entity to conduct a penal proceeding that would likely be an exceptional and extraordinary undertaking. The courts, with prosecutors and defense attorneys, conduct penal proceedings on a regular basis through a well-established criminal justice process that has been established to ensure fairness, justice, and due process for the offender. The Department recommends deleting the summary contempt provisions on page 4 of the bill. The Legislature can have the disruptive person removed, and have law enforcement deal with the offender through the criminal justice process.

The Department has one final recommendation. On page 3, at lines 13-14, the phrase, "to the attorney general who shall prosecute the offender in any court," should be amended to read, "to the attorney general who shall, if the evidence warrants, prosecute the offender in any court . . . ." The Attorney General must have the opportunity to evaluate the evidence, and the discretion to initiate a prosecution.

The Department respectfully requests that the Committee adopt its recommendations.



LATE

TESTIMONY IN OPPOSITION TO HB2751 HD2  
Relating to Offenses Against Public Administration

SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND  
MILITARY AFFAIRS

DATE: Thursday, March 15, 2012  
TIME: 2:50 PM  
PLACE: Conference Room 224, State Capitol  
PAGES: 2 total

Dear Chair and Members of the Committee:

Hawaii Citizens for the Separation of State and Church opposes HB2751 HD2, the so-called "Stop Mitch Kahle" bill, for a number of reasons.

Despite two re-writes, this bill continues to use vague and subjective terms and phrases such as "contemptuous behavior" and "impair the respect due to such proceedings." In testimony, the Attorney General warned the House: "this provision does not provide adequate notice of the conduct that is prohibited."

The disorderly conduct statute was carefully crafted not to limit free expression. Disorderly conduct "is meant to apply only to obscene and scatological language, and not to language that is politically or religiously offensive." It appears this bill is an attempt to circumvent those restrictions and directly limit free expression.

If "contemptuous behavior" simply refers to conduct or speech that legislators do not agree with, then the restriction is content-based and therefore a violation of freedom of speech rights under the US Constitution. For example, if under this bill the legislature continues to allow cheers and applause for introduced guests, then it must also permit jeers and boos.

This bill would allow the legislature to immediately find a person "in summary contempt." It would set up a Kangaroo Court where legislators get to play victim, judge, jury and executioner, meting out 10-day jail sentences for so-called "contemptuous behavior."

The House Sergeant-at-Arms has testified that the purpose of this bill is to strengthen Article III Section 18 of the Hawaii State Constitution, "Punishment of Nonmembers."

There is no evidence this obscure section of the Hawaii Constitution has ever been required or implemented. The House Sergeant at Arms admitted in committee hearings that he has never had to remove a member of the public.

The one time that the Senate Sergeant-At-Arms removed a citizen, the State was sued in federal court for violating that citizen's constitutional right and agreed to pay a \$100,000 settlement.

This bill is crafted merely to punish people who disagree with you.

As proponents of the First Amendment, the Hawaii Citizens for the Separation of State and Church believes there should be no statute outlawing "disrespect" or "contemptous behavior" any more than there should be a law against blasphemy.

We urge this committee to reject this misguided legislation. Existing statutes, which prohibit "disorderly conduct" and the "obstruction of government operations," are already sufficient to maintain decorum while protecting the rights of citizens to participate in our democracy.

If passed, this bill will only invite challenges and controversy.

Sincerely,

Holly J. Huber  
Co-Founder

LATE

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 15, 2012 8:43 AM  
**To:** PGM Testimony  
**Cc:** Lon Paresa  
**Subject:** Testimony for HB2751 on 3/15/2012 2:50:00 PM

Testimony for PGM 3/15/2012 2:50:00 PM HB2751

Conference room: 224  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Lon Paresa  
Organization: House of Representatives  
E-mail: [paresa@capitol.hawaii.gov](mailto:paresa@capitol.hawaii.gov)  
Submitted on: 3/15/2012

Comments:  
I support HB 2751, HD 2.

LATE

To The Honorable Chair Will Espero, Vice - Chair Michelle Kidani, and P.G.M.  
Committee Members:

I am in full support of HB2751. I believe that this bill will help the Sergeant At Arms of both the Senate and The House Of Representatives.

It is very important to keep decorum while The Senate and The House Of Representatives conduct business that impacts the citizens of Hawaii. This bill will help to maintain law and order in conference rooms and chambers.

Thank You,

Grant Okamoto

LATE

To The Honorable Chair Will Espero, Vice - Chair Michelle Kidani, and P.G.M.  
Committee Members:

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Thank You,

John Baker