

HB 2751, HD2

RELATING TO OFFENSES AGAINST PUBLIC ADMINISTRATION.

Description:

Implements the Legislature's constitutional authority to take action against disorderly or contemptuous behavior or breach of the peace at the Legislature. Effective July 1, 2034.
(HB2751 HD1)



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

March 15, 2012

Chair Espero, Vice Chair Kidani and members of the Committee, thank you for the opportunity to testify in support of House Bill 2751, HD2. My name is Kevin R. Kuroda, House Sergeant At Arms.

The purpose of House Bill 2751, HD2 is to strengthen the intent of Article III, section 18 of the Hawaii State Constitution which reads as follows:

PUNISHMENT OF NONMEMBERS

Section 18. Each house may punish by fine, or by imprisonment not exceeding thirty days, any person not a member of either house who shall be guilty of disrespect of such house by any disorderly or contemptuous behavior in its presence or that of any committee thereof; or who shall, on account of the exercise of any legislative function, threaten harm to the body or estate of any of the members of such house; or who shall assault, arrest or detain any witness or other person ordered to attend such house, on the witness' or other person's way going to or returning therefrom; or who shall rescue any person arrested by order of such house.

Any person charged with such an offense shall be informed in writing of the charge made against the person and have opportunity to present evidence and be heard in the person's own defense. [Ren and am Const Con 1978 and election Nov 7, 1978]

If adopted, HB 2751, HD2 will codify actions prohibited during official legislative proceedings.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 12, 2012 3:25 PM
To: PGM Testimony
Cc: inunyabus@gmail.com
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: Oppose
Testifier will be present: No
Submitted by: E. Dunbar
Organization: Individual
E-mail: inunyabus@gmail.com
Submitted on: 3/12/2012

Comments:

Regarding the redundancy of HB2751, the laws are already in place.

This has the appearance of a personal motivation by the SAA and it is disappointing that the House members would stoop to appease. Perhaps the House Sergeant at Arms is not feeling powerful enough or needs more recognition. This is not the place.

If he is no longer capable of performing his duties within the framework of laws on the books this could be a simple case of burnout.

This legislature cannot put itself in the position of making special laws for certain people that obviously do not understand existing laws and how to work within their provisions...or for that matter, the reasons for laws and Constitutional rights.

If this Legislature does not approve of free speech nor what the public is saying then you must employ some critical thinking to reconsider your own actions as to why.

By titling this bill "Offenses Against Public Administration" you are setting yourself apart from the people you represent. There cannot be any special laws for you. Public Administration IS the public. You do not get to have special laws that would enable you to have an edge or unlevel playing field on public decisions; this state belongs to the citizens and you are there to represent them and there are no democratic laws that exist that can make people agree with everything you do or say. Sorry.

MITCHELL G. KAHLE

1519 NUUANU AVE., #154, HONOLULU, HAWAII 96817 • PHONE: 524-4040

TESTIMONY IN OPPOSITION TO HB 2751, 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: 1 of 2 Total

Dear Chair and Members of the Committee:

I object. My name is Mitch Kahle, and I object to this bill on the grounds that it may violate the Constitution of the United States.

On November 7, 2011, Ben Villaflor, the Senate Sergeant-At-Arms, admitted in his sworn deposition that in all of his more than 30 years of experience he had never removed any person from the public gallery. That was at least until April 29, 2010, when Mr. Villaflor and deputy sheriffs forcefully ejected me for objecting to a Christian prayer.

For this I was arrested, charged with the crime of *disorderly conduct*, and aggressively prosecuted. In spite of all this, however, District Court Judge Leslie Hayashi ruled that I was NOT GUILTY. Judge Hayashi in fact scolded the prosecutor, asserting the state had “no prima facie evidence” that any crime had ever been committed. Further, the Judge ruled that I “had a right to object to the prayer, because it violated the constitutional separation of church and state.”

In my subsequent civil lawsuit against the state—which we just settled for \$100,000—the Federal Court found “...the nature of the proceedings that occur in the Senate Chambers ... is a non-public forum. That fact, however, does not mean that Kahle had no free speech rights when he attended the session.”

In denying Defendants’ Motion for Judgment on the Pleadings, Judge Leslie Kobayashi opined, “Kahle’s verbal objection to the Senate’s invocation can be reasonably interpreted as part of an on-going attempt to persuade the senators and other elected officials of the error in the practice” [of allowing sectarian invocations]. And further that “Defendants allegedly retaliated against him for doing so.”

In other words, although I acknowledge that sessions of the state legislature are normally considered to be non-public fora, the courts have now recognized exceptions, wherein citizens may exercise their First Amendment rights, including free speech, press, and petition, under certain circumstances when the public has been invited to participate in or otherwise acknowledge the proceedings.

Therefore, if the legislature allows or encourages public expressions of approval, such as applause, cheers, shouts of “Aloha” or “Amen,” then it must equally permit and tolerate expressions of disapproval, such as boos, jeers, or similar shouts of “objection.”

On April 29, 2010, when the Senate President pounded the gavel and said, “Will the members and the audience please rise,” this act constituted an invitation for public involvement in the proceedings. When the pastor looked up at the gallery and said, “Please bow with me in prayer,” this was a further invitation for public participation.

My objection to the Christian prayer on April 29, 2010 was protected free speech. When the Senate singled me out for removal and arrest, it engaged in viewpoint discrimination, as two judges have now so ruled.

I oppose HB 2751, HD2, because any application of this law will almost certainly constitute a similar act of unconstitutional viewpoint discrimination.

If you pass this bill—and the Governor signs it—I intend to challenge it at every opportunity.

I therefore urge this committee to set this ill-thought legislation aside as ineffective, unnecessary, and a risk to additional state and taxpayer liability.

Sincerely,

Mitchell Kahle

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 14, 2012 8:55 PM
To: PGM Testimony
Cc: cstravelerhi@yahoo.com
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: Oppose
Testifier will be present: Yes
Submitted by: Craig Smith
Organization: Individual
E-mail: cstravelerhi@yahoo.com
Submitted on: 3/14/2012

Comments:

Dear Chair Espero and fellow committee members,

Adulation does not come by force and you cannot legislate respect. You get the respect that you deserve when you show respect to others and the Constitution.

There are already rules on the books that cover this issue. I thought that the legislature was going to focus on jobs and the economy this session. How does this bill HB 2751 HD 2 improve the economy or create jobs? Unless of course you are trying to increase the number of correctional officers and the sergeant-of-arms staff, otherwise this bill has nothing to do with your supposed focus this year.

It seems to me that you are trying to demanded respect from the public by fear of incarceration. If the occupy movement has taught you anything it should be that fear of jail will not keep the 99% quiet when we are being oppressed by the government.

I have talked to lawyers and they said on the face this bill maybe constitutional but it will become unconstitutional the minute you enforce it against those that speak out at your failures and not those that support your decisions. So think carefully before you vote on this bill. Do you really want to waste more of the taxpayer's dollars by passing this ill-conceived bill; or would you rather use those precious dollars to ensure we have a safety net, our food supply is safe, and we have money to pay our teachers.

If you chose the later then you will show us the respect that you want/demand of us; and that would be a great thing. But if you chose to move this horrible bill forward, you will only be calling on us to speak-out and call for your removal.

Do the right thing and KILL this bill, not the Bill of Rights! For you cannot legislate respect. Respect only comes when it has been earned and that does not come from just winning an election.

Thank you for the opportunity to testify this on horrible bill.

Craig Smith