



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

LATE TESTIMONY

ON THE FOLLOWING MEASURE:

S.B. NO. 2246, RELATING TO SHIPPING CONTAINER INSPECTIONS.

BEFORE THE:

PUBLIC SAFETY AND MILITARY AFFAIRS

DATE: Tuesday, January 31, 2012 TIME: 3:15 p.m.
LOCATION: State Capitol, Room 224
TESTIFIER(S): David M. Louie, Attorney General, or
Lisa M. Itomura, Deputy Attorney General

Chair Espero and Members of the Committee:

The Department of the Attorney General has concerns about the constitutionality of this bill.

This bill would add a section to chapter 266, Hawaii Revised Statutes, to authorize the sheriff division in the Department of Public Safety to randomly inspect shipping containers without a warrant or probable cause. The bill puts no limitation on the discretion of the sheriff division in choosing which shipping containers to search and where they are searched, and does not define what is confiscated further than “any material constituting a threat directly or indirectly to the security of life or property in Hawaii[.]”

Unless an exception applies, random warrantless searches are unreasonable under the Fourth Amendment of the United States Constitution and article I, section 7, of the Hawaii State Constitution. The Hawaii Supreme Court has also noted that, in comparison to the Fourth Amendment, article I, section 7, of the Hawaii State Constitution provides broader protection to individuals in Hawaii because it also protects against unreasonable violations of privacy. State v. Dixon, 83 Hawaii 13, 23, 924 P.2d 181, 191 (1996). Thus, given that the shipping containers targeted here contain not only commercial items but also personal property whose owners have not waived their rights against unreasonable searches, the random warrantless searches authorized by the bill appear to be unreasonable and unconstitutional. We also note that the unlimited discretion of the sheriff division in conducting these searches also appears to violate the Hawaii State Constitution. State v. Fedak, 9 Haw.App. 98, 101-102, 825 P.2d 1068 (1992), superseded by statute, State v. Claunch, 111 Hawaii 59, 64, 137 P.3d 373, 378 (App.2006).

We respectfully ask the Committee to hold this bill.