



**ESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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LATE TESTIMONY

ON THE FOLLOWING MEASURE:  
S.B. NO. 2495, RELATING TO THE PENAL CODE.

BEFORE THE:

**COMMENTS**

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, February 2, 2012                      TIME: 9:30 a.m.  
LOCATION: State Capitol, Room 016  
TESTIFIER(S): David M. Louie, Attorney General, or  
Lynn Costales, Deputy Attorney General

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Chair Hee and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but has some concerns that the bill, as proposed, uses wording that is vague and overbroad.

This bill will hold a public or private landowner criminally responsible for a property nuisance. Generally, the bill sets out specific conditions or activities that would constitute a "property nuisance" that, if found to exist or continue on a person's property, could warrant criminal charges against the landowner for maintaining any one of the conditions or activities described.

One concern is that the nuisance is defined by vague and subjective terms, which will make enforcement efforts difficult. For example, it includes wording such as "visual blight," "reduces the aesthetic appearance of the neighborhood," "offensive to the senses," or "detrimental to nearby property or property values."

The bill also defines other conditions or activities that would constitute a nuisance using similar wording.

What one individual or neighborhood may consider to be a "visual blight" or "offensive to the senses," or what "reduces the aesthetic appearance of the neighborhood," may be different from another individual or neighborhood, because these terms are subjective in nature. These terms would make it difficult to enforce these provisions. They could also result in selective enforcement based on the persons or neighborhoods involved. While eliminating the subjective wording in the bill would reduce some of the challenges faced in its enforcement, it would not



## Office of the Public Defender State of Hawaii



**Timothy Ho, Chief Deputy Public Defender**  
**Testimony of the Office of the Public Defender,**  
**State of Hawaii to the Senate Committee on Judiciary and Labor**

February 2, 2012, 9:30 a.m.

**LATE TESTIMONY**

RE: S.B. 2495: Relating To The Penal Code

Chair Hee and Members of the Committee:

This measure would create a misdemeanor offense of maintaining a property nuisance. Real property would be considered a nuisance if it created a visual blight, reduction in aesthetic appearance of the neighborhood, was offensive to the senses or detrimental to nearby property values. We believe that the definition of what constitutes a property nuisance is subjective and vague, and has the potential to be abused by neighbors who do not get along with each other. We also believe a criminal penalty to be excessive in this instance, and for the reasons stated in this testimony, we oppose S.B. 2495.

Beauty is in the eye of the beholder. What constitutes a visual blight is subject to broad interpretation. The same applies to a reduction in aesthetic appearance and what is considered to be offensive to the senses. How would it be possible to prove that drop in property values is solely and directly related to a property nuisance, and not a result of a combination of a number of other factors?

We are by no means advocating on behalf of visual blights and properties that are offensive to the senses. We believe that this bill, as it is currently written, may be subject to broad interpretation, and result in it being applied unfairly. We also believe that the removal of a public nuisance should be litigated in civil court, with fines and reimbursement for the costs of removal of the nuisance. We do not believe that a criminal penalty should be imposed for this kind of violation.

We oppose S. B. 2495 in its current form. Thank you for the opportunity to comment on this bill.

DEPARTMENT OF ENVIRONMENTAL SERVICES  
**CITY AND COUNTY OF HONOLULU**

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DEPUTY DIRECTOR

ROSS S. TANIMOTO, P.E.  
DEPUTY DIRECTOR

IN REPLY REFER TO:  
WAS 12-23

February 1, 2012

The Honorable Clayton Hee, Chair  
and Members of the Committee on  
Judiciary and Labor  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

LATE TESTIMONY

Dear Chair Hee and Members:

Subject: Senate Bill 2495, Relating to the Penal Code and  
Senate Bill 2496, Relating to Landowner Liability

The City and County of Honolulu, Department of Environmental Services, opposes Senate Bill (SB) 2495, Relating to the Penal Code, and Senate Bill (SB) 2496, Relating to Landowner Liability, in their current form.

Both bills are related to "maintaining a property nuisance" with SB 2495 identifying certain conditions of maintaining a property nuisance as a misdemeanor, and SB 2496 providing for personal liability for those same conditions of maintaining a property nuisance.

The bills are overly broad and do not take into consideration appropriately zoned, permitted, and designated uses that would result in the property nuisance conditions being met. For example, as written, these bills would appear to apply to city refuse convenience centers, refuse transfer stations, landfills, baseyards, wastewater treatment plants and pumping stations, and construction baseyards, all of which are appropriately designated and permitted uses that exist for the public benefit.

If these bills were to proceed, they need to be clarified as to what limited properties are to be affected.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy E. Steinberger".

Timothy E. Steinberger, P.E.  
Director

eliminate vagueness of the activities or conditions described. As written, the bill does not provide definitions or adequate descriptions to provide a landowner with sufficient notice that a condition or activity present on property could lead to criminal prosecution and can be construed to include a valid use of private property.

Our nuisance abatement laws under chapter 712, Hawaii Revised Statutes, provides for an abatement action based on crimes of prostitution, pornography, drugs, and fireworks. This bill would greatly expand the scope of our nuisance abatement laws and require much greater resources to enforce those laws and process the litigation.

Accordingly, the Department of the Attorney General respectfully suggests that this bill could benefit from further discussion and consideration.



LATE TESTIMONY

IN REPLY REFER TO:  
CMS-APOO-00119

HONOLULU AUTHORITY for RAPID TRANSPORTATION

Kenneth Toru Hamayasu, P.E.  
INTERIM EXECUTIVE DIRECTOR AND CEO

February 1, 2012

VIA Email: [JDLtestimony@Capitol.hawaii.gov](mailto:JDLtestimony@Capitol.hawaii.gov)

The Honorable Clayton Hee, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
and Members of the Committee on Judiciary and Labor  
State Senate  
Hawaii State Capitol  
Honolulu, Hawaii 96813

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Wayne Y. Yoshioka

Dear Chair Hee, Vice Chair Shimabukuro, and Senators:

Subject: SB 2495 Relating to the Penal Code  
SB 2496 Relating to Landowner Liability  
Committee on Judiciary and Labor  
Thursday, February 2, 2012, at 9:30 AM

The Honolulu Authority for Rapid Transportation (HART) has the following concerns regarding the current language of Senate Bills 2495 and 2496.

The intent of Senate Bill 2495 is to establish the offense of maintaining a property nuisance as a misdemeanor and specify conditions that constitute maintaining a property nuisance, and the intent Senate Bill 2496 is to create a cause of action against any person who maintains a property nuisance that causes injury or damage to the person or property of another person. HART is concerned that these bills make no provisions for exemption of public projects that are under construction, such as the Honolulu High-Capacity Transit Corridor, highway, or utility projects where there are construction yards or areas where materials and waste are stored until reuse or disposal. In addition, these measures may affect several right-of-way acquisitions that HART is obtaining, as some of these properties have structures on them that may already be in blighted condition or, if not demolished immediately, may deteriorate into this state.

It is for these reasons that HART requests language be added to provide an exemption for government facilities.

Thank you for your consideration.

Sincerely,

Kenneth Toru Hamayasu  
Interim Executive Director and CEO

cc: HART Board