

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 25, 2013 6:58 AM
To: waltestimony
Cc: kahiwal@cs.com
Subject: Submitted testimony for HB72 on Jan 25, 2013 08:30AM

HB72

Submitted on: 1/25/2013

Testimony for WAL on Jan 25, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Clarence Ching	Individual	Oppose	No

Comments: I am Clarence ku Ching who resides in Kamuela, Hawai'i island. Among other things - this bill is wayyyyy too broad. It should, among other things, at least include a condition such as "the acting party must also comply with all pertinent court orders." And it must also include "penalties for any illegal acts committed by the actor simultaneously with his/her actions." This proposed bill may also have other consequences - such as violating citizens' right of due process. It may also violate citizens' civil rights. On the other hand, it violates the common law having to do with bailments - The temporary placement of control over, or possession of Personal Property by one person, the bailor, into the hands of another, the bailee, for a designated purpose upon which the parties have agreed. The term bailment is derived from the French bailor, "to deliver." It is generally considered to be a contractual relationship since the bailor and bailee, either expressly or impliedly, bind themselves to act according to particular terms. The bailee receives only control or possession of the property while the bailor retains the ownership interests in it. During the specific period a bailment exists, the bailee's interest in the property is superior to that of all others, including the bailor, unless the bailee violates some term of the agreement. Once the purpose for which the property has been delivered has been accomplished, the property will be returned to the bailor or otherwise disposed of pursuant to the bailor's directions. A bailment is not the same as a sale, which is an intentional transfer of ownership of personal property in exchange for something of value. A bailment involves only a transfer of possession or custody, not of ownership. A rental or lease of personal property might be a bailment, depending upon the agreement of the parties. A bailment is created when a parking garage attendant, the bailee, is given the keys to a motor vehicle by its owner, the bailor. The owner, in addition to renting the space, has transferred possession and control of the vehicle by relinquishing its keys to the attendant. If the keys were not made available and the vehicle was locked, the arrangement would be strictly a rental or lease, since there was no transfer of possession. A gratuitous loan and the delivery of property for repair or safekeeping are also typical situations in which a bailment is created. Categories There are three types of bailments: (1) for the benefit of the bailor and bailee; (2) for the sole benefit of the bailor; and (3) for the sole benefit of the bailee. A bailment for the mutual benefit of the parties is created when there is an exchange of performances between the parties. A bailment for the repair of an item is a bailment for mutual benefit when the bailee receives a fee in exchange for his or her work. A bailor receives the sole benefit from a bailment when a bailee acts gratuitously—for example, if a restaurant, a bailee, provides an attended coatroom free of charge to its customers, the bailors. By virtue of the terms of the bailment, the bailee agrees to act without any expectation of compensation. A bailment is created for the sole benefit of the bailee when both parties agree the property temporarily in the bailee's custody is to be used to his or her own advantage without giving anything to the bailor in return. The loan of a book from a library

is a bailment for the sole benefit of the bailee. Elements Three elements are generally necessary for the existence of a bailment: delivery, acceptance, and consideration. Actual possession of or control over property must be delivered to a bailee in order to create a bailment. The delivery of actual possession of an item allows the bailee to accomplish his or her duties toward the property without the interference of others. Control over property is not necessarily the same as physical custody of it but, rather, is a type of constructive delivery. The bailor gives the bailee the means of access to taking custody of it, without its actual delivery. The law construes such action as the equivalent of the physical transfer of the item. The delivery of the keys to a safe-deposit box is constructive delivery of its contents. A requisite to the creation of a bailment is the express or implied acceptance of possession of or control over the property by the bailee. A person cannot unwittingly become a bailee. Because a bailment is a contract, knowledge and acceptance of its terms are essential to its enforcement. Consideration, the exchange of something of value, must be present for a bailment to exist. Unlike the consideration required for most contracts, as long as one party gives up something of value, such action is regarded as good consideration. It is sufficient that the bailor suffer loss of use of the property by relinquishing its control to the bailee; the bailor has given up something of value—the immediate right to control the property.

Rights and LiabilitiesThe bailment contract embodying general principles of the law of bailments governs the rights and duties of the bailor and bailee. The duty of care that must be exercised by a bailee varies, depending on the type of bailment. In a bailment for mutual benefit, the bailee must take reasonable care of the bailed property. A bailee who fails to do so may be held liable for any damages incurred from his or her Negligence. When a bailor receives the sole benefit from the bailment, the bailee has a lesser duty to care for the property and is financially responsible only if he or she has been grossly negligent or has acted in bad faith in taking care of the property. In contrast, a bailee for whose sole benefit property has been bailed must exercise extraordinary care for the property. The bailee can use the property only in the manner authorized by the terms of the bailment. The bailee is liable for all injuries to the property from failure to properly care for or use it. Once the purpose of the bailment has been completed, the bailee usually must return the property to the bailor, or account for it, depending upon the terms of the contract. If, through no fault of his or her own, the return of the property is delayed or becomes impossible—for example, when it is lost during the course of the bailment or when a hurricane blows the property into the ocean—the bailee will not be held liable for nondelivery on demand. In all other situations, however, the bailee will be responsible for the tort of conversion for unjustifiable failure to redeliver the property as well as its unauthorized use. The provisions of the bailment contract may restrict the liability of a bailee for negligent care or unauthorized use of the property. Such terms may not, however, absolve the bailee from all liability for the consequences of his or her own Fraud or negligence. The bailor must have notice of all such limitations on liability. The restrictions will be enforced in any action brought for damages as long as the contract does not violate the law or public policy. Similarly, a bailee may extend his or her liability to the bailor by contract provision.

TerminationA bailment is ended when its purpose has been achieved, when the parties agree that it is terminated, or when the bailed property is destroyed. A bailment created for an indefinite period is terminable at will by either party, as long as the other party receives due notice of the intended termination. Once a bailment ends, the bailee must return the property to the bailor or possibly be liable for conversion. Further readings Cross, Frank B., and Roger Leroy Miller. 1998. *West's Legal Environment of Business: Test Cases, Ethical Regulatory, and International Issues*. St. Paul, Minn.: West. Hall, Kermit L. 1991. *A History of American Legal Culture: Cases and Materials*. New York: Oxford Univ. Press. Cross-references Bad Faith; Conversion; Damages; Negligence. I understand that there is a court order - or something of similar nature - that requires - in the case of the conflict between Occupy Honolulu people with the C & C of Honolulu - requiring seized property to be cared for. This statute would violate a present court order (or similar order or condition).

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the

convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



LIFE OF THE LAND

76 North King Street, Suite 203

Honolulu, Hawai`i 96817

Phone: 533-3454 henry.lifeoftheland@gmail.com

COMMITTEE ON WATER & LAND

Rep. Cindy Evans, Chair

Rep. Nicole E. Lowen, Vice Chair

DATE: Friday, January 25, 2013

TIME: 8:30 am

PLACE: Conference Room 325

HB 72 RELATING TO THE COUNTIES.

Aloha Chair Evans, Vice Chair Lowen and Members of the Committee!

Life of the Land is Hawai`i's own community action group advocating for the people and the land since 1970. Our mission is to preserve and protect the life of the land by promoting sustainable land use, promote open government through research, education, advocacy, and when necessary, litigation.

HB 72 exempts counties and their employees from liability for removing personal property from public property.

Greed by speculators led to the massive 2008 Wall Street economic meltdown which caused enormous financial loss among the working people. Most of the speculators have recovered financially and are prospering while many of the working class are still suffering the consequences.

Those living at or below the margins suffered. Some people who work and who have families have had to live on the streets.

The Occupy Movement raised public awareness about our national crisis.

Rather than dealing with either issue, some in government have favored sweeps to hide the problem. The houseless are swept from place to place as they seek to survive.

Courts have stepped in, and dealt with overly ambitious laws designed to take property from the houseless.

HB 72 proposes that those who are asked to participate in the sweeps, regardless of their legality, should be safe from prosecution.

HB 72 says that as long as you are obeying a governmental, you do not have to worry about the legality of the order.

This sets a dangerous precedent and is in violation of national and international code of ethics.

Mahalo

Henry Curtis
Executive Director

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 24, 2013 11:32 PM
To: waltestimony
Cc: hdoug@mac.com
Subject: Submitted testimony for HB72 on Jan 25, 2013 08:30AM

HB72

Submitted on: 1/24/2013

Testimony for WAL on Jan 25, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Hiroshi Douglas Matsuoka	Individual	Oppose	No

Comments: Aloha Chair Evans, Vice Chair Lowen, and the Committee on Water & Land, I am mindful that many wish for a law that would sweep away the homeless problem, but one cannot sweep away the homeless or their possessions, the right to which is protected by law and the Constitution. This would allow city workers to commit criminal acts and escape responsibility while treating homeless people like criminals when they haven't hurt anyone. That it's being heard by the Committee on Water & Land is a tip off that the law is intended to persecute the homeless at Waianae Boat Harbor. Making good law may be difficult, but passing something like is just plain wrong. It allows criminal acts to be exempt from accountability for the sake of criminalizing a vulnerable population who have not hurt anyone. No to HB72. Hiroshi Douglas Matsuoka 1560 Thurston Ave Apt 1101 Honolulu HI 96822

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

HB 72 Exempts counties and their employees from liability for removing personal property from public property.

Why would a bill that exempts county employees from criminal activity ever be introduced?

When a government exempts its self from liability it is no longer a government that serves the people but becomes a criminal enterprise. That is exactly what HB 72 does, it turns our county government into a criminal enterprise that has no liability for criminal activity.

Honolulu County Ordinance 11-29, Bill 54, is a unconstitutional insane bill that has made criminals out of our Honolulu County employees who steal personal belongings from our houseless persons, including medications.

Our houseless persons are victims and need our most urgent support and assistance. Where is our aloha and our compassion gone to? We need to be taking utmost care for our most needy not criminalizing them.

I must most strongly oppose HB 72 and any other attempts to turn our government into a criminal enterprise with no liability. Enough of this nonsense already!

Mahalo,

James W. Macey

Makakilo, HI

Larry Geller
Honolulu, HI 96817

HB72
WAL
Friday, January 25, 2013
8:30 a.m.
Room 325

COMMITTEE ON WATER & LAND
Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Vice Chair

January 25, 2013

Re: Relating to the Counties

In Opposition

Dear Rep. Evans, Rep. Lowen, and members of the Committee:

I am not sure why the state should consider passing a law to protect particular County employees from liability in carrying out a subset of their duties. Other employees do not enjoy similar protection, nor will it be effective.

Perhaps this bill is motivated by the City and County of Honolulu's recent actions confiscating and trashing the personal property of homeless citizens of Hawaii that resulted in the filing of a federal civil rights lawsuit on December 12, 2012. That suit (1:12-cv-00668) names City employees Westley Chun, Trish Morikawa and Larry Santos in their official and personal capacities along with others.

My understanding is that every person is entitled to protection against violation of their civil rights under federal law, and that this bill, even if it becomes state law, would have no effect in that regard. A

federal judge will determine if there is either official or personal liability in this or future cases that may be brought as a result of potentially illegal acts by County employees.



The picture, one of many posted on the Internet, allegedly shows City employees loading personal belongings into a dumpster instead of into bins for safekeeping as their own ordinance requires.

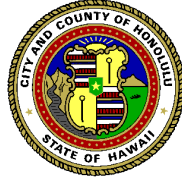
The state should not intervene by enacting a law condoning these allegedly illegal activities.

Larry Geller

DEPARTMENT OF FACILITY MAINTENANCE
CITY AND COUNTY OF HONOLULU

1000 Ulu`ohia Street, Suite 215, Kapolei, Hawaii 96707
Phone: (808) 768-3343 • Fax: (808) 768-3381
Website: www.honolulu.gov

KIRK CALDWELL
MAYOR



ROSS S. SASAMURA, P.E.
DIRECTOR AND CHIEF ENGINEER DESIGNATE

KENNETH A. SHIMIZU
DEPUTY DIRECTOR

IN REPLY REFER TO:

TESTIMONY OF ROSS S. SASAMURA, P.E.
DIRECTOR AND CHIEF ENGINEER DESIGNATE
DEPRATMENT OF FACILITY MAINTENANCE
BEFORE THE HOUSE
COMMITTEE ON WATER AND LAND
Friday, January 25, 2013, 8:30 a.m., Conference Room 325

To: Honorable Cindy Evans, Chair
Members of the Committee on Water and Land
State House of Representatives
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

RE: **Support of H.B. No. 72 Relating to the Counties**

Dear Chair Evans and Committee Members:

The City and County of Honolulu Department of Facility Maintenance (DFM) supports the passage of H.B. No. 72 which amends Chapter 46 of the Hawaii Revised Statutes (HRS) to exempt counties and county employees from liability resulting from the removal of personal property from county property. DFM in conjunction and coordination with other City and County of Honolulu (City) agencies, routinely enforce Chapter 29, Article 19 of the Revised Ordinances of Honolulu (ROH) relating to Stored Property.

Passage of H.B. No. 72 will enable city agencies and employees to more effectively and efficiently perform their duties and uphold their responsibilities when enforcing the stored property ordinance. Specifically, H.B. No 72 will deter frivolous legal complaints and claims that burden in-house legal counsel and other city employees with the time and effort required for the preparation and filing of responses rather than enforcing stored property ordinances or providing other needed public services.

H.B. No. 72 also provides a measure of assurance and peace of mind to City employees by protecting them from liability when dutifully and properly discharging their duties within the provisions of the stored property ordinance. The passage of H.B. No. 72 will facilitate enforcement of the stored property ordinance within the City and County of Honolulu for the benefit of all its residents and visitors.