



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 2212, RELATING TO OFFENSES AGAINST PUBLIC ADMINISTRATION.

BEFORE THE:

HOUSE COMMITTEE ON WATER AND LAND

DATE: Friday, February 9, 2018

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell A. Suzuki, First Deputy Attorney General, or
Lance Goto, Deputy Attorney General.

Chair Yamane and Members of the Committee:

The Department of the Attorney General ("the Department") appreciates the intent of the bill and submits comments.

The purpose of this bill is to create the class C felony offense of obstructing county real property zoning enforcement operations, which prohibits a person from knowingly making a false or misleading statement to a bona fide county inspector in the course of the inspector's investigation.

On line 7, the word "misleading" is vague and could result in enforcement issues.

On line 8, "bona fide" is not defined, and appears unnecessary.

While the offense is entitled "obstructing county real property zoning enforcement operations," the broad reference to "a bona fide county inspector" means that the offense could apply to statements made to any county inspector, even those not involved in real property zoning enforcement.

With respect to the grading of the offense as a felony, the Department notes that the felony grading has to be justified and consistent with the grading of existing offenses. Perjury, in violation of section 710-1060, Hawaii Revised Statutes (HRS), is a very serious offense and is graded as a class C felony offense. False Swearing in Official Matters, in violation of section 710-1061, HRS, is a misdemeanor. False Reporting to Law-enforcement Authorities, in violation of section 710-1015, HRS, is a

misdemeanor. Unsworn Falsification to Authorities, in violation of section 710-1063, HRS, is very similar to the proposed offense in this bill, and is a misdemeanor.

The Department also notes the unusually narrow focus of the proposed offense. The offense appears intended to only address an issue related to real property zoning enforcement by county inspectors. But a state law should not only prohibit false statements to county inspectors. Such a limitation could imply that it would be acceptable to make false statements to a state inspector or investigator. The narrow issue might be more appropriately addressed by a specific county through its own ordinances.

If the Committee would like to address the issue of false statements to inspectors, the Department respectfully suggests that it consider an amendment to an existing criminal statute. The proposed offense is similar to the existing offense of Unsworn Falsification to Authorities, set forth in section 710-1063, HRS. As such, it may be simpler and more effective to amend section 710-1063 by adding another subsection that reads:

Makes any statement, in oral, written, printed, or electronic form, which the person does not believe to be true, to a public servant engaged in criminal, civil, or administrative enforcement activity.

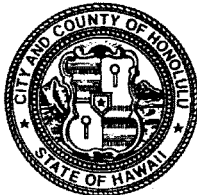
"Public servant" is broadly defined in section 710-1000, HRS, to mean any officer or employee of any branch of government.

The Department appreciates the opportunity to provide comments.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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February 9, 2018

The Honorable Ryan I. Yamane, Chair
and Members of the Committee on Water
and Land
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Yamane and Committee Members:

Subject: House Bill No. 2212
Relating to Zoning Enforcement

The Department of Planning and Permitting (DPP) **supports the intent of** House Bill No. 2212, which would establish that obstruction of county enforcement operations by making false or misleading statements can result in a class C felony.

We appreciate any new tools that will bolster our enforcement programs. Our inspectors do experience situations where people are not forthright with information. Proving false or misleading information has been given is difficult, but perhaps the threat of criminal prosecution may be enough of an incentive to persuade clients, tenants, landowners and others to be more truthful.

You may want to re-visit whether to establish the penalty as a class C felony. We note that in another bill, the Senate withdrew its proposal related to short term rental enforcement from a class C felony to a misdemeanor.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy K. Sokugawa".

Kathy K. Sokugawa
Acting Director

HB-2212

Submitted on: 2/8/2018 3:47:57 PM

Testimony for WAL on 2/9/2018 10:00:00 AM

LATE

| Submitted By | Organization | Testifier Position | Present at Hearing |
|------------------------------|------------------------------------|---------------------------|---------------------------|
| Benton Kealii Pang, Ph.D. | Hawaiian Civic Club of Honolulu | Support | No |

Comments:

I support this legislation making it a class C felony to obstruct real property zoning enforcement operations.