



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 529, H.D. 1, RELATING TO RESIDENTIAL REAL PROPERTY.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

DATE: Tuesday, March 16, 2021 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Via Videoconference , Room 308

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Wade H. Hargrove III,
Deputy Attorney General, at 587-3050)

Chair Nishihara and Members of the Committee:

The Department of the Attorney General provides the following comments on this measure.

This measure provides authority for the police or county planning and permitting agencies to: (1) access private property to conduct an investigation where certain conditions exist, (2) take enforcement action as appropriate if those conditions are found, and (3) request that the Department of Health assist in the evaluation of any health-related condition. These actions would be authorized “for the purpose of investigating any condition that the officer reasonably believes” may pose an “imminent threat of illness, disease, or injury, or imminent threat to health or safety” as provided on page 3, lines 9-11, as well as for the violation of any county zoning ordinance, rule or regulation that is adopted in accordance with section 46-4, Hawaii Revised Statutes (HRS), involving residentially zoned real property as provided on page 3, lines 12-18. Notably, the access authorized by this measure would not require a warrant. Further, it defines an “imminent threat of illness, disease, or injury, or imminent threat to health or safety” as including: (1) “[a]n unreasonable amount of accumulated trash”; (2) “[o]ne or more dilapidated structures that may attract or house insects, vermin, or other pests”; (3) “[o]ccupation by one or more unauthorized persons when the property is not in a habitable condition or is not equipped with proper sanitary facilities”; (4) “[o]ccupation of

a residence or other structure by a number of persons that exceeds the allowed population density for that location, pursuant to county zoning ordinance, rule, or regulation”; and (5) “[a]ny nuisance described in section 322-1,” HRS. This measure, on page 6, lines 1-6, also provides that a person who fails to remedy any condition on the property that gives rise to a notice of violation issued pursuant to the authority provided in this measure “shall be assessed by the agency a fine of not less than \$1,000 for each day the violation persists.” There is, however no provision setting forth a maximum fine.

This bill would allow police to conduct searches of private property without the prior consent of the owner or resident and without a search warrant. Such searches would likely be challenged on constitutional grounds relating to the Fourth Amendment’s protections against unreasonable search and seizure. The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

A judicially recognized exception to the requirement that authorities first obtain either a warrant or permission to enter private property is the presence of exigent circumstances. The Hawaii Supreme Court has defined an exigent circumstance justifying a warrantless search as limited to a situation where “immediate police response is required to prevent imminent danger to life or serious damage to property, or to forestall the likely escape of a suspect or the threatened removal or destruction of evidence.” State v. Texeira, 62 Haw. 44, 50 (1980).

The protections provided by the Fourth Amendment are best expressed as those which are necessary to “safeguard the privacy and security of individuals against arbitrary invasions by government officials.” Camara v. Municipal Court of City and County of San Francisco, 387 U.S. 523, 528 (1967). The United States Supreme Court has recognized that where a government agency wishes to inspect a private residence

for violations of local housing codes, and that effort is made without first securing a search warrant, such search is unreasonable under the Fourth Amendment. Id. at 533. This is true notwithstanding the fact that the search was related generally to the need to protect the public welfare and safety. Id. The U.S. Supreme Court statement in Camara is instructive here. The Court stated that, “It has nowhere been urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement. Thus, we do not find the public need argument dispositive.” Id. Where an inspection is of a private dwelling and the inspection is designed to identify defects with respect to the condition of the property, refusal by the owner or occupant and the type of building may of course support a finding of probable cause justifying the issuance of a warrant. Id. at 538-540. Nevertheless, a warrant is required absent exigent circumstances, even though the inspection may concern matters pertaining to, and the protection of, public health and safety in general. Id. at 540.

Based on the foregoing, we recommend that proposed section 46-__(a)(1)(B) on page 3, line 11, 46-__(a)(2) on page 3, lines 12-18, and proposed section 46-__(e) on page 4, line 20 – page 5, line 13, in section 2 of the bill be deleted in their entirety. With these provisions removed, the measure simply codifies in statute what has been recognized by the courts--that inspections performed by a government official acting in good faith may proceed without a warrant and without permission when there is reason to believe an imminent threat to public health and safety may be averted. Additionally, we recommend establishing a maximum penalty so that there is clear legislative authority for the imposition of a penalty within a certain range by the implementing agency. This can be accomplished by adding wording to page 6, lines 5-6, so that it reads “a fine of not less than \$1,000 and not more than \$_____ for each day the violation persists.”

We appreciate the opportunity to comment on this measure.

LATE

HB-529-HD-1

Submitted on: 3/15/2021 4:58:09 PM

Testimony for PSM on 3/16/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Meera Kohler	Individual	Oppose	No

Comments:

RBOAA opposes HB 529 HD1. This version of the Bill would violate the Fourth Amendment of the United States Constitution.

This Bill allows a planning department employee to enter a private residence without a search warrant and without the owner's permission or consent. If someone were suspected of a criminal act, there are more constitutional protections for that person than this Bill provides for just ordinary citizens in their homes. This Bill allows the planning department to walk into anyone's home to look for "unreasonable amounts of trash."

This Bill does not conform to the 4th Amendment of the US Constitution, State of Hawaii's Statutes for police conduct while serving a search warrant, Hawaii constitution search and seizure, and U.S. Supreme Court case law.

This Bill would also jeopardize the lives of those dwelling in the home as well as those entering into someone else's home without permission or legal warrant signed by a Judge. It is likely that a stranger entering into a private residence is going to be thought to be an intruder or robber. The occupant of the dwelling may believe that a home invasion is happening. This Bill does not take into account such real life consequences.

RBOAA respectfully requests that this Bill be deferred.

HB-529-HD-1

Submitted on: 3/12/2021 3:41:39 PM

Testimony for PSM on 3/16/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

Our property is Private you have no permission to enter at any time with out a proper worantWe the people will not stand for any infraction of our freedom Remeber this! WE ARE YOUR EMPLOYER NOT THE STATE OR COUNTY. With out US there is no State or County!

HB-529-HD-1

Submitted on: 3/12/2021 5:44:23 PM

Testimony for PSM on 3/16/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ellen Godbey Carson	Individual	Support	No

Comments:

Please pass HB529. We have derelict, dangerous housing in Hawaii that gets cited for health and safety violations, but nothing is done for years. I live in Makiki neighborhood, where we've had 2 properties, one on Pensacola and one on Kinau Street, that were total dumps, eyesores, safety hazards, and more, both with multiple violation notices but nothing is ever done to take them to foreclosure. Sadly, major fires occurred at both houses in the past 2 years, which threatened neighbor properties and required major emergency fire responses, Yet even afterwards, one of the two properties, on Pensacola Street, remains as an ugly, dangerous burned out residence, full of trash, just waiting for another chance to burn. Let's get an effective enforcement system with heavier fines and the right to take these properties to foreclosure, so new owners can fix the problems and get the properties back into safe use.

Thank you.

LATE

HB-529-HD-1

Submitted on: 3/15/2021 1:47:25 PM

Testimony for PSM on 3/16/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Chang	Individual	Oppose	No

Comments:

I oppose this Bill that allows county or state departmental employees, who are not sworn police officers to enter regular citizens homes without a search warrant and without consent of the owner or occupant. The extreme measures of this Bill are to force entry into a home to search for trash, vermin, insects, etc.

This Bill:

Violates the 4th Amendment of the U.S.. Constitution of unreasonable search and seizure;

Violates the 4th Amendment requirement of a warrant;

Violates HRS 803-11 police conduct when serving a search warrant;

Violates Hawaii State Constitution;

Is not supported by case law: Hawaii Supreme Court decision; State v Naeole. Why wouldn't a departmental employee not have the same burden of conduct that a police officer has.

Is not consistent with State of Hawaii Office of the Public Defender: **"The purpose of the search and seizure provision of the Hawai'i Constitution, and the fourth amendment to the United States Constitution, is to "safeguard individuals from the arbitrary, oppressive, and harassing conduct of government officials. (February 2021)**

The Health Department already possesses authority to investigate health hazards. This Bill is unnecessary to achieve that goal.

This Bill would unnecessarily endanger the safety of occupants and state/county employees. A person entering a dwelling without permission and consent is likely to be perceived as an intruder. This will jeopardize everyone's safety.

I respectfully request that this Bill be deferred. Please respect citizens' privacy, dignity and right to dwell securely in their own homes.

