

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 5, 2021
9:30 A.M.
State Capitol, Teleconference

S.B. 612
RELATING TO CRITICAL ELECTRICAL INFRASTRUCTURE

Senate Committee on Judiciary

The Department of Transportation (DOT) **supports** S.B. 612 to amend Chapter 708 of the Hawaii Revised Statutes by adding a new section that specifically criminalizes trespasses on critical electrical infrastructure.

DOT agrees that the class C felony penalty for such trespass is appropriate given the State's dependency on reliable electrical power for fundamental health, safety, and welfare functions. However, DOT would like to expand the definition of "Critical electrical infrastructure" to include transmission equipment and appurtenances that transmit power to government facilities and fixtures such as streetlights and traffic signals.

Thank you for the opportunity to provide testimony.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 612, RELATING TO CRITICAL ELECTRICAL INFRASTRUCTURE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Friday, February 5, 2021

TIME: 9:30 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Albert Cook,
Deputy Attorney General, at 586-0940)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (the Department) appreciates the intent of this bill but has concerns and provides suggested amendments.

This bill creates a class C felony criminal offense for entering into or remaining on critical electrical infrastructure with the intent to commit a crime against a person or against property rights and adds a definition of "critical electrical infrastructure."

On page 2, line 11, to page 3, line 3, the bill defines the new trespass offense as follows:

- (1) A person commits the offense of criminal trespass on critical electrical infrastructure when:
 - (a) The person intentionally enters or remains unlawfully on property of a critical electrical infrastructure with intent to commit therein a crime against a person or against property rights, and the property is fenced or enclosed in a manner designed to exclude intruders with posted warning signs; or
 - (b) The person recklessly disregards a risk that the property belongs to a critical electrical infrastructure company.
- (2) An unlawful act occurs in the course of committing the offense if it occurs in effecting entry or while on the property or in immediate flight therefrom.

Subsection (1)(b) attempts to provide a second way to commit the offense, but it

does not define any prohibited conduct. It only describes a person recklessly disregarding a risk that the property belongs to a critical electrical infrastructure company.

Subsection (2) of the bill states “An unlawful act occurs in the course of committing the offense if it occurs in effecting entry or while on the property or in immediate flight therefrom”. But this provision is not relevant to nor a part of this offense, and appears to be misplaced.

It is also noted that the requirement in subsection (1)(a) for “posted warning signs” is vague. The Department suggests adding the following requirement for the signage:

"Private Property - Critical Electrical Infrastructure (HRS § 708-800) - No Trespassing". The sign or signs, containing letters no less than two inches in height, shall be placed at reasonable intervals no less than three signs to a mile along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line.

These issues appear to stem from the bill attempting to create a trespass crime using burglary language. The differences are that trespass offenses, under sections 708-813 through 708-815, Hawaii Revised Statutes (HRS), require a knowing state of mind and generally do not require entering or remaining on property with the intent to commit a crime. Trespass crimes are punishable as misdemeanors, petty misdemeanors or violations. Burglary in the First and Second Degrees, under sections 708-810 and 708-811, HRS, require an intentional state of mind and the additional element of intending to commit a crime when entering or remaining in a dwelling or building. They are punishable as class B and class C felonies, respectively.

The Department suggests that the purpose of the bill would be achieved by amending the Burglary in the Second Degree offense, under section 708-811. The suggested amendment would read as follows:

§708-811 Burglary in the second degree. (1) A person commits the offense of burglary in the second degree if ~~the~~:

- (a) The person intentionally enters or remains unlawfully in a building with intent to commit therein a crime against a person or against property rights; or
- (b) The person intentionally enters or remains unlawfully on a critical electrical infrastructure, which is fenced or enclosed in a manner designed to exclude intruders with posted warning signs stating "Private Property - Critical Electrical Infrastructure (HRS § 708-800) - No Trespassing" and the person recklessly disregards a substantial and unjustifiable risk that the property is a critical electrical infrastructure, with intent to commit therein a crime against a person or against property rights.

(2) Burglary in the second degree is a class C felony.

If the Legislature wants to create a trespass bill instead of a burglary bill, the Department suggests the following language:

§708- Criminal trespass on critical electrical infrastructure.

(1) A person commits the offense of criminal trespass on critical electrical infrastructure if the person knowingly enters or remains unlawfully on critical electrical infrastructure, which is fenced or enclosed in a manner designed to exclude intruders with posted warning signs stating "Private Property - Critical Electrical Infrastructure (HRS § 708-800) - No Trespassing" and the person recklessly disregards a substantial and unjustifiable risk that the property is a critical electrical infrastructure, with intent to commit therein a crime against a person or against property rights.

(2) Criminal trespass on critical electrical infrastructure is a class C felony.

The Department believes this amendment to the Burglary in the Second Degree statute will accomplish the purpose of the bill consistently within the existing statutory scheme.

Thank you for the opportunity to provide comments.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
JUDICIARY**

**S.B. 612
Relating to Critical Electrical Infrastructure**

February 5, 2021
9:30 a.m., Agenda Item #7
State Capitol, Via Videoconference

Jonathon Grems
Security Manager
Hawaiian Electric Company, Inc.

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

My name is Jonathon Grems and I am testifying on behalf of Hawaiian Electric Company, Inc. (Hawaiian Electric) in **support of S.B. 612**, Relating to Critical Electrical Infrastructure. The purpose of this bill is to protect the public and electric utility employees from the serious dangers associated with compromised electrical infrastructure and to ensure the resilience of the electric grid that residents, businesses and others rely on for the delivery of safe, clean and reliable electricity.

Under the current law, existing trespass laws do not provide a proportionate level of protection for such a critical and essential resource. Currently, if an individual is convicted of Criminal Trespass in the First Degree (708-813), he or she may receive up to a year in jail and/or pay a fine of up to \$1,000, which is not enough of a deterrent.

Hawaiian Electric's secured facilities, many of which are high-voltage and dangerous environments, are compromised on a regular basis, and while we have implemented tools to deter such activity, including but not limited to, securing our facilities with fencing and installing cameras and signage, these tools are not sufficient in deterring trespassing of our critical facilities. Hawaiian Electric believes increased penalties would be a stronger deterrent to those who unlawfully access Hawaiian Electric properties and intentionally or knowingly commit acts of

vandalism or theft. The impact and duration of a major electrical outage caused by those individuals could last for days or even months. The outages caused by trespassers result in immeasurable costs to our State's residents, businesses, and military partners.

Accordingly, Hawaiian Electric strongly supports S.B. 612. Thank you for this opportunity to testify.

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR



ANNE E. PERREIRA-EUSTAQUIO
DIRECTOR

JOANN A. VIDINHAR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
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February 3, 2021

The Honorable Karl Rhoads, Chair
Committee on Judiciary
The State Senate
State Capitol, Room 204
Honolulu, Hawaii 96813

Dear Chair Rhoads:

Subject: Senate Bill (SB) 612 Relating to Critical Electrical Infrastructure

I am Manuel P. Neves, Chair of the Hawaii State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD support SB 612, which establishes the offense of criminal trespass on critical electrical infrastructure.

The HFD responded to a number of incidents involving trespassing into critical electrical infrastructure facilities, which have resulted in serious injury and, in at least one case, a fatality. The SFC believes SB 612 will improve deterrence to similar incidents in the future and help protect Hawaii's critical electrical infrastructure.

Public safety and property protection are priorities of the SFC and the HFD, and SB 612 helps to fulfill this objective.

The SFC and the HFD urge your committee's support on the passage of SB 612.

Should you have questions, please contact SFC Administrative Specialist Lloyd Rogers at 723-7176 or lrogers@honolulu.gov.

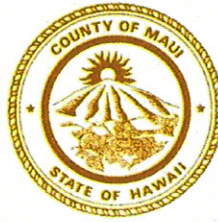
Sincerely,

MANUEL P. NEVES
Chair

MICHAEL P. VICTORINO
Mayor

DAVID C. THYNE
Fire Chief

BRADFORD K. VENTURA
Deputy Fire Chief



LATE

DEPARTMENT OF FIRE & PUBLIC SAFETY

COUNTY OF MAUI
200 DAIRY ROAD
KAHULUI, HI 96732

February 4, 2021

The Honorable Karl Rhoads, Chair
Committee on Judiciary
The State Senate
State Capitol, Room 204
Honolulu, Hawaii 96813

Dear Chair Rhoads:

Subject: Senate Bill (SB) 612 Relating to Critical Electrical Infrastructure

I am David C. Thyne, member of the Hawaii State Fire Council (SFC) and Fire Chief of the Maui Fire Department (MFD). The SFC and the MFD support SB 612, which establishes the offense of criminal trespass on critical electrical infrastructure.

The HFD has responded to a number of incidents involving trespassing into critical electrical infrastructure facilities which have resulted in serious injury and, at least in one case, a fatality. The SFC believes SB 612 will improve deterrence to similar incidents in the future and help protect Hawaii's critical electrical infrastructure.

Public safety and property protection are priorities of the SFC and the MFD, and SB 612 helps to fulfill this objective.

The SFC and the MFD urge your committee's support on the passage of SB 612.

Should you have questions, please contact SFC Administrative Specialist Lloyd Rogers at (808) 723-7176 or lrogers@honolulu.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "David C. Thyne".

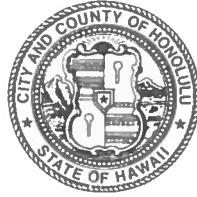
DAVID C. THYNE
Fire Chief

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.gov

LATE

RICK BLAINGIARDI
MAYOR



SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE MK-KK

February 5, 2021

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 612, Relating to Critical Electrical Infrastructure

I am Mikel Kunishima, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 612, Relating to Critical Electrical Infrastructure.

Attacks on critical electrical infrastructure could be used to cause widespread panic and economic distress. The risks associated with criminal threats include damage, vandalism, copper theft, and unauthorized access into the facility. The government's primary responsibilities are to ensure the health, safety, and security of its citizen; thus having a vested interest in protecting these facilities. This bill will emphasize the importance in protecting our critical electrical infrastructure and deter criminal activity by making trespassing on these facilities a felony.

The HPD urges you to support Senate Bill No. 612, Relating to Critical Electrical Infrastructure.

Thank you for the opportunity to testify.

APPROVED:

Handwritten signature of Susan Ballard in black ink.

Susan Ballard
Chief of Police

Sincerely,

Handwritten signature of Mikel Kunishima in black ink.

Mikel Kunishima, Captain
Criminal Investigation Division

LATE

Alooooohaaaa Senators,

I just love the irony that individuals that are primarily.

- 1) descendants of economic refugees, or
- 2) transplants, and/or their descendants

with no ancestral connections to these islands, or the legitimate and internationally recognized **country** of the Kingdom of Hawai'i, are enacting legislation about "property rights."

It is, after all, only because of the violation of "property rights" on a grand scale that you as individuals illegally, under international law, now, knowingly and disingenuously, claim legislative jurisdiction.

Yet, let me indulge your individual and collective delusions of grandeur and I'll pretend for a moment that this monument to: cognitive dissonance, bigoted opportunism, treachery and treason is momentarily legitimate.

As I have understood your proposed legislation; the executives of a private corporation, HECO, have admitted to you their incompetence at securing "*high-voltage and dangerous facilities*" that are "*fundamental to the national defense of the country.*"

Hawaiian Electric also "*reports that their secured facilities...are compromised on a regular basis, and that the security measures that have been implemented to deter that activity have not eliminated trespassing in critical facilities*"

Isn't it a bit of an oxymoron for HECO to suggest that "*their secured facilities are compromised on a regular basis.*"? Wouldn't "unsecure facilities" be a better description?

Given that executives of HECO have failed to adequately secure facilities "*fundamental to national defense*", have you as Senators, in your oversight capacity, held hearings to evaluate the alarming insufficiency of their implemented security measures? If not, why not?

Was this egregious lapse of performance in the face of national defense evaluated by the Public Utilities Commission as part of its new Performance-Based Regulatory Framework announced 6 weeks ago on December 23rd, 2020? [Performance Based Regulation \(PBR\)](#) If not, why not?

Exactly how many trespassers were apprehended by the HPD and prosecuted by the Department of the Prosecuting Attorney? Presumably there were so many that were charged with criminal trespassing in the 1st degree (*a misdemeanor when in possession of a firearm*) that it warrants new legislation to protect a specific class of private enterprise(...*and of course their investors.*)

Doesn't it strike you as odd Senators that criminal trespassing in possession of a firearm is a misdemeanor. Yet, just stepping foot on the premises of a private corporation, sorry I meant "critical electrical infrastructure company", is a class C felony?

Learned Senators, can you also please clarify what you mean by "*A power generation facility used specifically during times of high demand*" and "*Any other facility used to support the generation, transmission, or distribution of electricity.*"

That wouldn't happen to mean wind farms like the one in Kahuku where the community protested because of the safety concerns posed by the proximity of the 600ft windmills to an elementary school. Would it? Would they now become felons for advocating for the safety of the children in community? Or, are political donations and corporate profits more important? Which one is the crime worthy of a class C felony Senators?

Shouldn't it be a class C felony for corporation executives to recklessly knowingly disregard known public safety risks? Oh that's right, they are protected from individual criminal liability because the corporation is a person that can be held criminally liable, but can't go to jail. Silly me for forgetting.

Also, just for my own and the public's edification, how much did companies like HECO and AES contribute in donations to Democratic candidates in Hawai'i in the past 10 years? I am, of course, not suggesting that there is any correlation at all between political lobbying, political donations and the legislative process. Again, I keep forgetting that this is a democracy based on only the will of the people. Right?

It's not like we live in a political hegemony where personal ambition, political opportunism and personal enrichment would ever factor into the equation. That would be soooooo undemocratic, wouldn't it Senators? That'd be like usurping the legitimacy of a country's government for capitalist or imperial reasons.

Anyway, I am pretty sure that the above comes under your oversight purview.

I do have one final question for each of you individually.

How do you manage to sleep at night? I'd imagine that you have to be at least a little sociopathic to sleep well. Otherwise, wouldn't your conscience get to you knowing that you are the beneficiaries of the trampling of the human rights of an entire nation?

When you are lying on your respective death-beds and looking back at your accomplishments, will you ever be able to forgive yourself that you were an active part in the suppression of the human rights of the rightful people of Hawai'i, rights that you have enjoyed at their expense ?

Just a thought.

T. Paul Gallagher (aka Mr. G)

LATE

SB-612

Submitted on: 2/5/2021 5:41:37 AM

Testimony for JDC on 2/5/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kamalani Keliikuli	Individual	Oppose	No

Comments:

I oppose

LATE

SB-612

Submitted on: 2/5/2021 8:40:26 AM

Testimony for JDC on 2/5/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Regina Peterson	Individual	Oppose	No

Comments:

How dare you so called leaders try to enact a bill that criminalizes our very right to protest and protect our land and health of our families from destructive money hungry corporations. section 708-813 - criminal trespass in the first degree with possession of a firearm is considered a misdemeanor, and you are trying to enforce a C felony charge of our 1st amendment right to peacefully assemble. Explain to us, the people of THIS land, the logic here!!! There is some personal agenda by those who have reintroduced this bill that was killed last year, but I will tell you this, I, like many others who have deep rooted ties to these lands...THE VERY LANDS THAT FEED US, HEAL US, PROVIDE FOR US...WILL NOT be afraid of your scare tactics...our ancestors have taught us to never be afraid to stand up for what is right...He ali'i ka 'Ä• ina, he kauwÄ• ke kanaka, A hiki i ke aloha 'Ä• ina hope loa!!! Kill this bill!!!! we oppose it indefinitely!!!

LATE

SB-612

Submitted on: 2/5/2021 8:55:23 AM

Testimony for JDC on 2/5/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rayne Kauhi	Individual	Oppose	No

Comments:

In Opposition of this bill.

LATE

SB-612

Submitted on: 2/5/2021 8:59:30 AM

Testimony for JDC on 2/5/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alex Kauhi	Individual	Oppose	No

Comments:

In Opposition.