

HB-707-HD-1

Submitted on: 3/13/2023 2:15:20 PM

Testimony for JDC on 3/16/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Daniel Foley	Testifying for Commission to Improve Standards of Conduct	Support	Remotely Via Zoom

Comments:

Dear Mr. Chairman and mebers of the Senate Judiciary Committee,

As Chair of the Commission to Improve Standards of Conduct, I support HB 707, HD 1, that makes it a class C felony to make false, fictitious or fraudulant claims against the state or a county, or any of their departments or agencies. This bill is modeled after the federal false claims statute. See the Commission's December 1, 2022 Final Report at page 21.

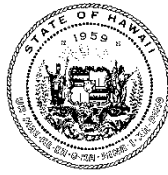
HB 707 was proposed by the Commission along with two others - HB 710 (false staement) and HB 711 (fraud) which are also modeled after federal statutes.

Federal, state and county law enforcement officials testified before the Commission that state and county law enforcement need statutes as their federal counterpart to root out corruption in state and county govenment rather than always relying on federal law enforcement to do this job.

The House amended the Commission's proposed bill to allow an exception to a mandatory minimum, a reasonable amendment on an issue where the Commission was divided.

The House also amended the Commission's proposed bill to eliminate the disqualification from elective public office due to legitimate constitutional concerns and instead substituted disqualification from public financing as a candidate for elective office.

Mahalo, Judge Daniel Foley (ret.)



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 14, 2023

TO: The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary

The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

FROM: Kristin Izumi-Nitao, Executive Director
Campaign Spending Commission

SUBJECT: **Testimony on H.B. No. 707, HD1, Relating to False Claims.**

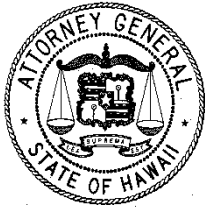
Thursday, March 16, 2023
10:30 a.m., Conference Room 016 & Videoconference

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission (“Commission”) supports this bill.

This bill adds a new section to Chapter 710, Hawaii Revised Statutes (“HRS”), to establish the criminal offense of making a false, fictitious, or fraudulent claim against state or local government as a class C felony. The original bill made a person charged under this new section ineligible for a deferred acceptance of guilty or nolo contendere plea under HRS chapter 853. The original bill also disqualified a person convicted under this new section from holding elective public office for a period of ten years. HD 1 allows a person charged under this new section to be eligible for a deferred acceptance of guilty or nolo contendere plea and changed the ban on holding public elective office for ten years to a ban on receiving public financing for elections. The Commission believes that the original bill would be more effective in deterring criminal conduct, however, the Commission also believes that establishing the new crime is more important at this time.

This new offense is modeled after federal law. The Commission supports the enhancement of criminal penalties for offenses involving public corruption. If enforced, the Commission believes that criminal penalties are the most effective remedies to deter public corruption.

The Commission requests that this Committee pass this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

H.B. NO. 707, H.D. 1, RELATING TO FALSE CLAIMS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, March 16, 2023

TIME: 10:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Cheuk Fu Lui, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) supports this bill and provides the following comments.

The purpose of this bill is to implement recommendations of the Commission to Improve Standards of Conduct (Commission) by establishing the felony offense of making a false, fictitious, or fraudulent claim against the State, which mirrors federal criminal statutes. This bill provides state and local law enforcement with much needed tools to combat corruption, fraud, and waste. As the Commission's Final Report recognized, ". . . the State's Penal Code and enforcement agencies do not have sufficient authority to adequately investigate, charge, and sentence instances of corruption and fraud." Dec. 1, 2022, at page 19.

The proposed criminal offense is based on 18 United States Code section 287 and is intended to criminalize conduct that is currently punishable at the federal level but not the state or local level. The purpose is to protect the government against those who would cheat or mislead it in the administration of its programs.

Upon review of House Draft 1, we believe further amendment is needed to ensure that the bill achieves its stated purpose and objective. The new section being added to chapter 710, Hawaii Revised Statutes (HRS), by section 2 of the original draft of the bill precluded persons charged under this offense from seeking a deferred acceptance of a plea. That new section was amended in House Draft 1 to allow the

seeking of a deferred acceptance of a plea, but only the word "not" was removed, so the provision now reads, "[a] person charged under this section shall be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853." Page 3, line 21, to page 4, line 3. Under section 853-4, HRS, there are multiple factors in determining whether a person is eligible to seek a deferred acceptance. However, the present wording can be argued to mean that any person is eligible regardless of the factors enumerated in section 853-4. While the Department still supports preclusion of persons charged under this offense from seeking a deferred acceptance of a plea, if it is the Legislature's intent to allow such persons to seek a deferral under this section, removing the sentence in its entirety will achieve that intended purpose. Accordingly, we recommend that subsection (4) of the new section being added to chapter 710, HRS, in section 2 of the bill be amended at page 3, line 20, to page 4, line 3, as follows:

(4) Making a false, fictitious, or fraudulent claim against the State or a county is a class C felony. ~~[A person charged under this section shall be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.]~~ A person who is convicted under this section shall be disqualified from receiving public financing under part XIII, subpart J, of chapter 11 for a period of ten years from the date of conviction.

Thank you for the opportunity to testify.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
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STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai`i

March 16, 2023

RE: H.B. 707; RELATING TO FALSE CLAIMS.

Chair Rhoads, Vice Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney, City and County of Honolulu (“Department”), submits the following testimony in **support** of H.B. 707, H.D. 1, with **suggested amendments**.

The purpose of H.B. 707, H.D. 1, is to establish a new criminal offense under state law, that would mirror a similar statute currently used under federal law, to prohibit false, fictitious, or fraudulent claims against any branch of our State or county government. This could include false billing, over-representing or under-representing the amount of goods or services provided or owed, or other such falsities.

While the Department appreciates the intent of the prior committee, we believe **these types of offenses should not be given the opportunity for deferred acceptance of a guilty or nolo contendere plea**, as that could eventually result in the case(s) being wiped from the offender’s record, almost as if it never happened. Notably, the proposed offense could only be committed if the offender “knowingly” submitted false, fictitious or fraudulent claims; it would not be possible for someone to be convicted of this offense if their level of culpability was merely reckless or negligent. Please keep in mind, even if deferral is prohibited—as the Department believes it should be—it is highly unlikely that these offenders would ever be sentenced to prison time. Based on the Department’s general experience with the State criminal justice system, we would anticipate that all or nearly all offenders convicted of this type of charge would be sentenced to probation.

Given the years of scandal that have shaken the public’s trust in Hawaii’s state and local government, the Department believes our state laws should be amended to reflect the egregious nature of certain offenses—such as false claims—that further betray the public’s trust and/or manipulate the system to one’s own benefit. While federal prosecutors have largely taken the lead in prosecuting incidents of state and local government misconduct, this is largely due to the greater effectiveness and severity of federal laws on the matter. To better equip our county prosecutors

with the tools to prosecute this type of corruption, the Department strongly believes our State laws must be strengthened and carry serious consequences. As such, we respectfully **ask that that word “not” be re-inserted on p. 4, ln. 1**, to read: “...this section shall not be eligible for a deferred...”

If the Committee still wishes to give potential offenders the opportunity to qualify for deferred acceptance of guilty or nolo contendere plea, despite the fact that this would allow the case to be dismissed after the deferral period, the Committee may want to delete the relevant sentence (i.e. “A person charged under this section shall be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.” at pp. 3-4, lns. 21-2) from the bill entirely. HRS Chapter 853 already provides eligibility criteria and procedures for deferral, and no additional reference is needed. Also, this sentence could be interpreted to mean that all of these offenders are mandated to be eligible for deferral (despite the criteria in Chapter 853), and we do not believe that is the intent.

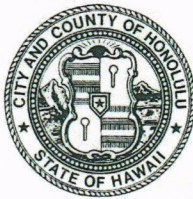
Looking to the proposed statute’s origins in federal law, the Department respectfully **suggests that subsection (2) of the proposed offense be deleted (see p. 3, lns. 14-16)**, as it would be unprecedented, and potentially very confusing and problematic, for the interpretation of one of our state statutes to be entirely reliant on federal caselaw. Because Section 1 of the bill already notes that State courts and counsel “should look to federal case law and precedent for direction” (p. 3, lns. 1-2), we believe that language alone provides sufficient and appropriate guidance for everyone involved, without conflating state and federal law.

Every day, thousands of dedicated government workers serve the public diligently and honorably, and their hard work and good reputation should not be marred by those who would selfishly seek their own ends. With the amendments suggested above, the Department believes that H.B. 707, H.D. 1, would appropriately address this type of public corruption, and allow our county prosecutors to reasonably pursue prosecution of these matters.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **supports** the passage of H.B. 707, H.D. 1, with **suggested amendments**. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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



RICK BLANGIARDI
MAYOR

ARTHUR J. LOGAN
CHIEF

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS

OUR REFERENCE PB-MS

March 16, 2023

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 707, H.D. 1, Relating to False Claims

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


The HPD supports House Bill No. 707, H.D. 1, Relating to False Claims.

False, fictitious, or fraudulent claims against the state or a county can have a devastating impact on the government and community. It can lead to a disservice to the community, misallocation of resources, and erode economic prosperity. Consequently, this new bill serves as a deterrent.

The HPD urges you to support House Bill No. 707, H.D. 1, Relating to False Claims. Thank you for the opportunity to testify.

APPROVED:

Sincerely,



Arthur J. Logan
Chief of Police


Parker Bode, Captain
Criminal Investigation Division

HB-707-HD-1

Submitted on: 3/13/2023 3:20:42 PM

Testimony for JDC on 3/16/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

This excellent bill came from the Commission to Improve Standards of Conduct. Please support. We need to restore faith and trust in government which was tarnished by English and Cullen.

HB-707-HD-1

Submitted on: 3/15/2023 2:28:48 PM

Testimony for JDC on 3/16/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Diane Ware	Individual	Support	Written Testimony Only

Comments:

Dear Chair and Committee Members,

I urge you to pass this measure to uphold ethics and trust in government.Sincerely,

Diane Ware from the Moku o Ka'u

HB-707-HD-1

Submitted on: 3/15/2023 5:57:05 PM

Testimony for JDC on 3/16/2023 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support