



**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. 986, H.D. 1, RELATING TO OFFICIAL MISCONDUCT.

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 strongly supports this bill and offers the following comments.

This bill seeks to address corruption and misconduct by public officers or employees by establishing the criminal offense of official misconduct.

The existing bribery statute, section 710-1040, Hawaii Revised Statutes (HRS), only prohibits conduct involving monetary interests. However, public corruption can take many forms beyond mere economic gains, including illegal lobbying, bribery, sexual favors, favorable school placements for children, and anything that violates the public trust for personal gain.

This bill proposes to add to part II of chapter 710, HRS, a new section that establishes a class C felony offense of "official misconduct" that specifically prohibits a public servant, acting in his or her official capacity, from performing an unauthorized act or refraining from performing an official duty with the intent to obtain any benefit beyond lawful compensation and that also prohibits the intentional or knowing submission of statements or documents containing false information by a public servant in the public servant's official capacity.

Upon review of H.D. 1 and the additional wording in subsection (1)(b) of the new section (page 2, line 2), we believe that further amendment is needed to ensure that the bill achieves its stated purpose and effectiveness. Subsection (1)(b) aims to deter

public servants from refraining to perform an official duty with an ill intent of receiving unwarranted benefit. The phrase "required by law" may severely restrict the effectiveness of the bill because most official duties of public servants are not required by law per se, nor does the law enumerate every single official duty a public servant should perform. Therefore, we recommend reverting to the original version of the bill in this subsection, by deleting the wording "required by law" from page 2, line 2.

With the requested amendment, this bill will provide a mechanism to increase the public's trust and confidence in our state and local government while providing law enforcement with a tool to adequately deter and commensurately punish public corruption.

The Department recommends that subsection (1)(b) of the new section being added to chapter 710, HRS, in section 2 of the bill be amended at page 1, line 15, through page 2, line 2, as follows:

- (b) With intent to obtain a benefit other than the person's lawful compensation, intentionally or knowingly refrains from performing an official duty [~~required by law;~~] that is imposed upon the person by law or is clearly inherent in the nature of the person's office;

With that change, we would recommend that subsection (2) of the new section be amended at page 2, lines 9 to 11, as follows:

- (2) As used in this section, "official function" means the decision, opinion, recommendation, vote, or other exercise or performance of duty of a public servant[-]; and "an official duty that is clearly inherent in the nature of the person's office" means one or more unspecified duties that are so essential to the accomplishment of the purposes for which the office was created that it is clearly inherent in the nature of the office.

Thank you for the opportunity to testify.

HB-986-HD-1

Submitted on: 3/13/2023 3:17:11 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:

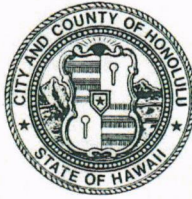
Dear Mr. Chairman and members of the Senate Judiciary Committee,

Although HB 986, HD 1, was not specifically considered by and proposed by the Commission to Improve Standards of Conduct, as Chair of the Commission I support this bill as consistent with the overall recommendations of the Commission in increasing the tools of state and county law enforcement to root out and prosecute government corruption.

Mahalo, Judge Daniel Foley (ret.)

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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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. 986, H.D. 1, Relating to Official Misconduct

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. 986, H.D. 1, Relating to Official Misconduct.


Public servant misconduct erodes community trust, degrades social prosperity, and weakens democracy. This measure rightfully establishes a felony offense to protect against public servant misconduct. It will serve as a deterrent and help to restore trust in government.

The HPD urges you to support House Bill No. 986, H.D. 1, Relating to Official Misconduct. Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Arthur J. Logan
Chief of Police


Parker Bode, Captain
Criminal Investigation Division

HB-986-HD-1

Submitted on: 3/13/2023 12:23:00 PM

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

| Submitted By | Organization | Testifier Position | Testify |
|---------------------------|---------------------|---------------------------|---------------------------|
| Lynn Murakami Akatsuka | Individual | Support | Written Testimony Only |

Comments:

I strongly support the passage of HB 986, HD 1. Individuals need to be responsible for their actions and its consequences.

HB-986-HD-1

Submitted on: 3/15/2023 5:58:18 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