



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:
S.B. NO. 2854, RELATING TO HOMELESSNESS.

BEFORE THE:
SENATE COMMITTEES ON HEALTH AND HUMAN SERVICES AND ON PUBLIC
SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS

DATE: Friday, February 2, 2024 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 225 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Marjorie A. Lau, Deputy Attorney General

Chairs San Buenaventura and Wakai and Members of the Committees:

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

This bill establishes a vacated encampment clean up task force within the Department of Transportation (DOT), which shall identify potential entities that may enter into intergovernmental agreements to coordinate the clean up of vacated encampments on land managed by the United States Army Garrison Hawaii (USAGH). The bill provides that the task force shall be chaired by the DOT's homelessness coordinator who shall determine the members of the task force and lists certain representatives (or their designees), which the chair may consider inviting as task force members. The bill appropriates funds out of the general revenues of the State to each of the DOT and the Department of Land and Natural Resources (DLNR) for purposes of the bill.

To better support the intent and implementation of the bill, we recommend that the Committees consider the following items.

First, the bill includes several provisions directing the USAGH to take certain actions: (1) "notify the state agency . . . and any elected officials . . . of identifying a vacated encampment on its property" (page 4, lines 7-11), and (2) "consider the following factors when determining if an appropriate period of vacancy has elapsed for

an encampment to be deemed a vacated encampment” (page 5, lines 4-6). Generally, the Supremacy Clause of the United States Constitution forbids states from regulating federal property or instrumentalities unless Congress has clearly authorized it. See Jack’s Tours, Inc. v. Kilauea Military Camp, 112 Hawai’i 150, 157, 145 P.3d 693, 700 (2006) (“[g]enerally, ‘where Congress does not affirmatively declare its instrumentalities or property subject to regulation, the federal function must be left free of regulation’” (citations omitted)). We are not aware of any congressional authorization for the State to regulate USAGH in this manner. As a related issue, section 1 of the bill, at page 1, lines 1-5, provides that the Legislature finds “there is a need to encourage collaborative intergovernmental approaches to addressing the challenges of homelessness, including ensuring the health and safety of residents on state- and federally-owned lands” and cites “debris left behind by vacated homeless encampments” (page 1, line 6) as posing potential environmental and public health hazards. However, the task force is charged with addressing vacated encampments located specifically “on lands managed by the United States Army Garrison Hawaii” and not on State-managed lands. It is not clear upon what basis or authority non-federal entities, including the State, are authorized or obligated to clean up lands under the management of USAGH. To the extent USAGH has management of the lands, it would appear to be USAGH’s responsibility to clean up such lands. The following items are subject to clarification of this first item.

Second, section 2 adds a new chapter to the Hawaii Revised Statutes, which establishes the task force with the chair as the only designated member of the task force. While the chairperson of the DLNR (or designee) may be invited to be a member, it is not required. It may be appropriate that the chairperson of the DLNR (or designee) be a designated member because DLNR is one of the expending agencies of appropriated funds.

Third, it is not clear whether (1) the task force is “to identify the potential entities that may enter into intergovernmental agreements to coordinate the clean up of vacated encampments” (page 2, line 19, to page 3, line 1), or whether (2) “the entities represented on the task force shall enter into intergovernmental agreements to coordinate clean up activities” (page 3, line 20, to page 4, line 1). With these provisions

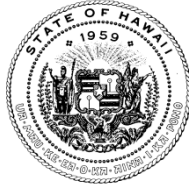
being unclear, it could be inferred that the bill allows the task force to identify specific vendors to do the clean-up. However, the appropriations are to DOT and DLNR as the expending agencies with such expenditures subject to compliance with law, including procurement law, such that it should be clarified how the appropriations to DOT and DLNR are intended to be spent. As a related consideration, perhaps entering into the intergovernmental agreements should be discretionary (as opposed to mandatory) in the event the parties are unable to reach agreement.

Fourth, certain terms in the bill could be defined for clarity. As used in sections -2 and -3, it is not clear whether “entities” means “members.” An “intergovernmental agreement” could be defined to mean an agreement between two or more governments to confirm who are the intended contracting parties. It is not clear whether “lands managed by the United States Army Garrison Hawaii” mean lands owned in fee by the federal government or lands leased by the Army (or both).

Fifth, on page 4, at lines 7-8, it is not clear what is meant by “the state agency with the closest jurisdiction to the United States Army Garrison Hawaii land.” And it is not clear what the purpose is for the USAGH to provide notice to that state agency.

We respectfully ask the Committees to consider our comments. Thank you for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



EDWIN H. SNIFFEN
DIRECTOR
KA LUNA HO'OKELE

Deputy Directors
Nā Hope Luna Ho'okele
DREANALEE K. KALILI
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DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
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February 2, 2024
3:00 PM
State Capitol, RM 225 & Videoconference

**S.B. 2854
RELATING TO HOMELESSNESS**

LATE

Senate Committee on Public Safety and Intergovernmental and Military Affairs and
Senate Committee on Health and Human Services

The Hawaii Department of Transportation (HDOT) would like to **provide comments** to S.B. 2854 which establishes a vacated encampment clean up task force within the HDOT.

Currently, HDOT coordinates with the United States Army Garrison Hawaii in efforts to maintain state Rights-of-Ways directly adjacent to military properties. Maintaining these areas includes coordinating cleanup operations of unpermitted homeless encampments on and around military properties. The HDOT is willing to enter into agreements with US Army Garrison Hawaii to support efforts to remove biohazards, hazardous materials, and items posing immediate public health or safety risks, including materials that could be a fire hazard. Furthermore, the HDOT requests a consideration for appropriations of general funds to support this purpose.

Thank you for the opportunity to provide testimony.

SB-2854

Submitted on: 1/31/2024 7:47:16 AM

Testimony for HHS on 2/2/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Malcolm Ching	Testifying for Waikele Community Association	Support	Written Testimony Only

Comments:

We have seen a large increase in homeless individuals in our community. They make their dwellings within our landscaping, leave trash behinds and even deficate in that area which is very unsanitary. Even though we tell them to leave, they eventually come back because they do not want to go to a shelter and they have no where else to go.

On behalf of the Waikele Community Association, I support this measuer to create an area to locate these people so that they are able to get the assistance they need.

Malcolm Ching, AMS, PCAM General Manager

LATE

SB-2854

Submitted on: 2/1/2024 4:02:09 PM

Testimony for HHS on 2/2/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
COL Steven McGunegle	Testifying for US Army Garrison Hawaii	Comments	Written Testimony Only

Comments:

Homelessness is a challenge that crosses boundaries and requires a collaborative community approach. This combined approaches needs to provide support services and also reduce risk and support community safety. Cooperation between federal, State, County, and non-profit agencies is needed and this bill offers a potential pathway to improved collaboration. US Army Garrison independent of this bill is pursuing options for Intergovernmental Support Agreements that will improve efficiency and cooperation.



**TESTIMONY WITH COMMENTS ON SB 2854
RELATING TO HOMELESSNESS**

Senate Committee on Health and Human Services
The Honorable Joy A. San Buenaventura, Chair
The Honorable Henry J.C. Aquino, Vice Chair

Senate Committee on Public Safety and Intergovernmental and Military Affairs
The Honorable Glenn Wakai, Chair
The Honorable Brandon J.C. Elefante, Vice Chair

Friday, February 2, 2024 at 3:00 PM
Conference Room 225 & Videoconference
415 South Beretania Street

Chairs San Buenaventura and Wakai, Vice Chairs Aquino and Elefante, and Members of the Committees:

The Hawaii Military Affairs Council ("MAC") wishes to offer comments on SB 2854 which establishes a vacated encampment clean up task force to identify potential entities to enter into intergovernmental agreements to coordinate the clean-up of vacated encampments located on lands managed by United States Army Garrison Hawai'i.

The Hawaii Military Affairs Council (MAC) was established in 1985 when the Chamber was appointed by the State to serve as the liaison to the military. The MAC advocates on behalf of Hawaii's military, and is comprised of business leaders, academic institutions, State and County officials, members of the CODEL, community leaders, labor unions and organizations and retired U.S. flag and general officers. The MAC works to support Hawaii's location as a strategic U.S. headquarters in the Indo-Asia-Pacific region which is crucial for U.S. national and homeland security.

The proposal to establish an intergovernmental homelessness task force within the Department of Transportation is well-intentioned. However, there is already an existing, effective collaboration between the United States Army Garrison and the Department of Transportation which successfully works on, among other issues, the challenges of homelessness on state- and federally-owned lands.



The Department of Transportation, with its clearance capability, has been working to address the environmental and public health hazards posed by vacated encampments. The proposed task force seems redundant given this established commitment and relationship. Most respectfully, it would be more beneficial to focus on strengthening this relationship and leveraging their combined capabilities.

Thank you for the opportunity to offer comments.

SB-2854

Submitted on: 2/1/2024 12:17:40 PM

Testimony for HHS on 2/2/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shana Wailana Kukila	Individual	Support	Remotely Via Zoom

Comments:

RE: SB2854 Related to Homelessness

POSITION: Support

I fully support a more humane and strategic plan for assisting our houseless community in acquiring permanent housing and permanent mental health and other services if they are unable to care for themselves. The homeless sweeps are not done with any care for the individuals they are moving, and it takes more planning and care to do such a violent and destructive act to those who are at the bottom of our society.

Remember that how we treat the least of our society is a measure of who we are as a society. We need to treat the suffering on our streets with more understanding and humanity, even if they smell, are unpleasant, or are in the way of an upcoming event that we need the streets cleared for. They are not trash, although they make a lot of trash at times. They are human beings, where shall they put their things? Though we would see their array of tarps and call it a homeless "encampment," those camps are still their only "home." No matter how many shelters are built, if they continue to suffer from mental health, trauma, or drug addiction, they will never be able to comply with the rules that are put forth such as no pets or no long term beds available or those that accomodate a disabled person, and they will continue to find their only home, escape or solace from their troubles on the streets.

Thank you to the introducer of this bill. It is much needed, and I encourage the legislature to fully fund these programs.

Mahalo for your time and consideration in hearing my testimony,

Shana W. Kukila

Hilo, HI

SB-2854

Submitted on: 1/31/2024 8:18:18 AM

Testimony for HHS on 2/2/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lillie mcafee	Individual	Support	Written Testimony Only

Comments:

Pass this bill. VOTE YES

SB-2854

Submitted on: 1/31/2024 11:45:26 AM

Testimony for HHS on 2/2/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Terri Yoshinaga	Individual	Support	Written Testimony Only

Comments:

Support

SB-2854

Submitted on: 2/1/2024 8:51:04 AM

Testimony for HHS on 2/2/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ted Meehan	Individual	Support	Written Testimony Only

Comments:

I fully support HB2854. Recently, a homeless encampment on U.S. Government property in Waipahu was cleaned up and occupants provided opportunities for a safe living environment. I worked with State Representative Trish La Chica and her staff on providing information regarding this encampment as it was located close to Koa Ridge, the community I live in.

Again, please pass HB2854. Thank you.

Ted Meehan

Waipahu, HI

WRITTEN TESTIMONY IN SUPPORT OF S.B. 2854
To the Senate Committees on
Public Safety and Intergovernmental and Military Affairs and Health and Human Services
Friday, February 2, 2024

Aloha Chairs Wakai and San Buenaventura, Vice Chairs Elefante and Aquino, and Members of the Senate Committees:

My name is Danielle Bass, and I am submitting written testimony supporting the intent of S.B. 2854, in my capacity as the Chair of the Mililani-Waipii'o-Melemanu Neighborhood Board #25, although it's important to note that our board has not formally taken a position on this bill or its house companion bill.

Mahalo for scheduling S.B. 2854 Relating to Homelessness, which establishes a vacated encampment clean up task force to identify potential entities to enter into intergovernmental agreements to coordinate the cleanup of vacated encampments located on lands managed by United States Army Garrison Hawai'i.

The Mililani community has raised numerous concerns related to a homeless encampment in Kipapa Gulch, managed by the U.S. Army Garrison Hawai'i. When this site is abandoned, it is frequently left cluttered with rubbish, debris, and personal effects, which could endanger the environmental health of the watershed.

I hope that our federal partners will continue to collaborate with the State and community organizations in Central O'ahu to prioritize the health, safety, and wellbeing of our community through the responsible stewardship of land in the Kipapa Gulch.

Mahalo for this opportunity to testify,

Danielle Bass