



**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. 921, RELATING TO ENVIRONMENTAL CRIMES.

BEFORE THE:

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

DATE: Tuesday, February 7, 2023 **TIME:** 8:45 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Kory W. Young, Deputy Attorney General

Chair Lowen and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of the bill and provides the following comments.

The purposes of the bill are to establish an environmental crimes unit within the Department of the Attorney General, provide criminal penalties for the illegal disposal of motor vehicle tires, and establish a motor vehicle tire surcharge.

It appears that the bill may be subject to challenge as being in violation of the single subject requirement of section 14 of article III of the State Constitution, "[e]ach law shall embrace but one subject, which shall be expressed in its title." The subject expressed in this bill's title is "environmental crimes." The establishment of an environmental crimes unit within the Department and the criminal penalties for the improper disposal of motor vehicle tires seem to be reasonably related to the subject "environmental crimes", but the establishment of a tire surcharge may not be. It appears that the only relationship between the establishment of the environmental crimes unit and the tire surcharge is that the moneys from the tire surcharge may be used in part to help fund the environmental crimes unit. We suggest that the bill's preamble expressly state that the intent is to authorize the environmental crimes unit to prosecute environmental crimes, including the illegal disposal of motor vehicle tires, with the funding provided by the tire surcharge. This may help to clarify a nexus between the two subjects.

Because it is difficult to predict the types of violations the environmental crimes unit may be called upon to investigate and prosecute, creating a broader mandate would give the unit greater flexibility and utility. To reflect the broad scope of violations the environmental crimes unit may investigate or pursue, the Department suggests the following amendment on page 1, line 9:

"prosecute violations of laws including but not limited to those relating to air and water quality . . ." (additions are underlined).

We have concerns about the distribution of the fines to the authorized agency that enforced the prohibition at page 4, lines 2-4. This bill makes the illegal disposal of tires a criminal petty misdemeanor offense, which means that the disposition of these offenses will be through the District Courts. The distribution of fines by the District Courts is controlled by section 706-643(2), Hawaii Revised Statutes (HRS). That section will need to be amended to allow for the special distribution of these fines. It should be noted that section 706-643(2), HRS, presently allows for distribution of fines to specified special funds, but not to specific agencies.

The provision requiring fines to be distributed to the "authorized agency that enforced the prohibition" requires further clarification. If the environmental crimes unit, for instance, was to prosecute a case involving the illegal disposal of tires, would the fines be directed to the Department of Health, the agency that currently is responsible for illegal tire disposal enforcement, and a partner in the environmental crimes unit, or to the Department that will house the unit?

Funding for the environmental crimes unit within the Department may also be a concern. On page 1, line 13, through page 2, line 4, the bill appropriates funds for the unit, but provides that it shall be expended by the Department of Health. The tire surcharge established under section 5 of this bill, is to be deposited into the environmental management special fund, which may be used by the Department of Health for the purposes specified in section 342I-29, HRS, on page 7, lines 4-18, including funding the environmental crimes unit. None of the funds is appropriated for or is under the control of the Attorney General, where the environmental crimes unit will actually be housed and staffed.

The Department is available to assist with drafting wording that would address the comments and recommendations offered in our testimony.

Thank you for the opportunity to provide comments on the bill.

HB-921

Submitted on: 2/1/2023 12:03:27 PM

Testimony for EEP on 2/7/2023 8:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Lynette Cruz	Malama Makua	Support	Written Testimony Only

Comments:

Excellent bill! Totally in support. Mahalo for taking a harder line on those who dump tires. Obviously needed.

HB-921

Submitted on: 2/4/2023 2:05:15 PM

Testimony for EEP on 2/7/2023 8:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

More Bull SHIT!!!!