



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1591, RELATING TO THE SECURITY OF PUBLIC PLACES.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND
MILITARY AFFAIRS

DATE: Monday, February 6, 2023 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Janine R. Udoi, Deputy Attorney General

Chair Wakai and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

This bill amends chapter 46, Hawaii Revised Statutes (HRS), to create a "public places special fund" to be "used exclusively to contract private security to work with county law enforcement to enforce state or county laws, rules, ordinances, or regulations prohibiting camping, loitering, nuisance, or other violations in public places." (page 1, lines 11-15). The bill also amends section 237D-6.5(b), HRS, to add a new paragraph (5) to allocate ".005 per cent of the transient accommodations taxes . . . to the public places special fund." (page 3, lines 16-18).

This bill could be strengthened by adding a robust declaration of its public purpose in a new section of the bill. Article VII, section 4, of the Hawaii Constitution, titled "Appropriations for Private Purposes Prohibited," provides in part:

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, *directly or indirectly, except for a public purpose.* [Emphasis added.]

Determining what constitutes a public purpose is generally a question for the Legislature to decide. *State ex rel. Amemiya v. Anderson*, 56 Haw. 566, 574, 545 P.2d 1175, 1180-81 (1976). The question is whether the ultimate objective of the act serves a public

purpose and benefits accruing to private interests are incidental. *Id.* at 576, 545 P.2d at 1182. Because this bill proposes to use transient accommodations taxes to hire private security, this bill could be better insulated against a constitutional challenge by explaining in more detail the public-purpose rationale underpinning the bill.

Additionally, the words "public places" as used on page 1, line 15, are undefined and ambiguous within the context of this bill. For clarity and to avoid confusion, the Department recommends replacing the words "in public places" on page 1, line 15, with "on state or county property" or another appropriate phrase defining the areas where private security would be utilized.

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



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SB 1591 | 2/6/23

Aloha Chair, Vice Chair & the PSM,

Kapalama NSW testifies in strong support of SB 1591.

The last official count from HPD in Feb 2022 reported a shortage of 300 officers. Communities everywhere in Hawaii are being affected more & more by public safety, crime & homelessness, key issues that are interconnected. The purpose of this act is to create a special fund to designate .005 cent of transient accommodations taxes to be used for contracting with private security to work with HPD to enforce state & county laws.

As a safety coordinator and co-captain in our community, I have witnessed private businesses and stores that have suffered because of a lack of coordinated approach to managing crimes. Often times, these are petty misdemeanors such as homeless people stealing alcohol from Times or loitering & trespassing at Walgreens.

There are 2 situations we have noticed. First, shopping malls that do provide security can only manage small nuisances such as somebody peeing in a parking lot or mild situations of trespasses where the individual is cooperative and not belligerent. The big problem that occurs here is re-offenders that cause private security & HPD to constantly address the same issue, such as someone who likes to camp at a mall every other week. Or a belligerent trespasser that cannot comprehend that he is reoffending every other day because he is suffering from mental health conditions. To solve this problem would actually require a 3rd party social service organization, a mental health provider or CORE to also be contacted to stop the cycle from repeating. Due to inefficiencies of the system, these support services, private security & county police may not have an integrated approach to managing these concerns.

The second kind of situation is when a business or mall does not have security and operates late night or 24 hrs i.e. 24 hr Walgreens. These stores attract homeless people to camp and loiter. The stores become plagued with homeless people and often are a breeding ground to dangerous crimes because the homeless people will park their cars, invite their friends, they'll do heroine and throw their needles all over the place.



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It is not the obligation of the private businesses to provide security but it is the due diligence of the State to manage domestic tranquility and to mitigate the homeless situation. Often times, the HPD will say that they do not have jurisdiction on private property or at private businesses. Yet, it is the due diligence of the County to provide police officers to enforce the law and it should be within the County's police departments purview to work with private security & service providers to deter crime. The burden of protection is of state & county concern. To be able to provide better support, the State & City should consider contracting with private security, service providers and CORE. This is a management issue and it can be addressed with a coordinated management plan and integrating services.

Blessings,

Angela Melody Young

Safety coordinator & Co-captain of Kapalama NSW



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Works Cited

1. Geanous, Jacob. "HPD Hopes to Add Nearly 300 Officers by next Summer amid Ongoing Staffing Concerns." Honolulu Civil Beat, 10 Mar. 2022, <https://www.civilbeat.org/2022/03/hpd-hopes-to-add-nearly-300-officers-by-next-summer-amid-ongoing-staffing-concerns/>.

TAX FOUNDATION OF HAWAII

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SUBJECT: TRANSIENT ACCOMMODATIONS, New Public Places Special Fund

BILL NUMBER: SB 1591

INTRODUCED BY: MORIWAKI

EXECUTIVE SUMMARY: Creates a Public Places Special Fund to fund hiring private security to work with county law enforcement to enforce state or county laws, rules, ordinances, or regulations prohibiting camping, loitering, nuisance, or other violations in public places. Allocates .005 per cent of the transient accommodations tax to the Public Places Special Fund to be allocated to the counties in proportion to the amount of tax collected in each county.

SYNOPSIS: Adds a new section to chapter 46, HRS, to create the public places special fund. Moneys in the special fund shall be allocated to the counties in proportion to the amount of transient accommodations taxes collected in each county under chapter 237D, HRS. Moneys in the special fund shall be used exclusively to contract private security to work with county law enforcement to enforce state or county laws, rules, ordinances, or regulations prohibiting camping, loitering, nuisance, or other violations in public places.

Amends section 237D-6.5, HRS, to add an earmark for 5 basis points of the TAT collections to feed the above fund.

EFFECTIVE DATE: July 1, 2023.

STAFF COMMENTS: The proposed measure would perpetuate the earmarking of TAT revenues. Security at public places may provide a societal benefit. But does that justify grabbing a pot of barrel tax money without going through the normal budgeting process that also considers sweltering primary schools, underfunded state pensions, or disaster relief for rain-flooded or lava-burnt counties as well as the economic decimation wrought by COVID-19?

We also find it curious that the money must be used for contract services and cannot be used to pay State employees.

Rather than the continual earmarking of revenues, a direct appropriation of general funds would be preferable. Earmarking revenues from any tax type for a particular purpose decreases transparency and accountability.

Next, it should be remembered that revenues diverted for a special purpose, in this case to stuff in a special fund with a broad mission, will not be counted against the state's spending ceiling or debt limit and will obscure the state's true financial condition.

Digested: 2/3/2023



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS
" A Police Organization for Police Officers Only "
Founded 1971

February 4, 2023

VIA ONLINE

The Honorable Glenn Wakai
Chair
The Honorable Brandon J.C. Elefante
Vice-Chair
Senate Committee on Public Safety and Intergovernmental and Military Affairs
Hawaii State Capitol, Rooms 407, 217
415 South Beretania Street
Honolulu, HI 96813

Re: **SB 1591 - Relating to the Security of Public Places**

Dear Chair Wakai, Vice-Chair Elefante, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers ("SHOPO") and write to you on behalf of our Union in **strong opposition** to SB 1591. This bill seeks to create a Public Places Special Fund ("Fund") to fund the hiring of private security guards to enforce state or county laws, rules, ordinances, or regulations prohibiting camping, loitering, nuisance, or other violations in public places and allocates 0.005 percent of the transient accommodations tax ("TAT") to the Fund. Not only is this bill alarmingly imprecise and vague, but it further begs the question as to why those extra funds are not being used to address the critical officer shortage and fully staff our communities with trained, vetted and fully committed law enforcement officers who have police powers to protect our communities. I do not believe private security guards are the answer to our problems that involve very violent criminals.

As you may know, the county police departments, while limited in funding as compared to other jurisdictions, are working extremely hard under very trying circumstances to address the ongoing critical officer shortages and to refill the rapidly accelerating vacancies. If the state is going into the law enforcement business outside of its Department of Law Enforcement and Department of Public Safety, competent and fully vested law enforcement officers are required for the job rather than security guards.

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The Honorable Glenn Wakai, Chair
The Honorable Brandon J.C. Elefante, Vice-Chair
Senate Committee on Public Safety and Intergovernmental and Military Affairs
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Our state and county communities need to attract and retain more officers, not private security guards who are not trained to police standards, do not carry the same oaths of office or are held to the same standards of conduct. Putting aside the concerning laundry list of questions this bill raises, the TAT monies for private security in public places proposed by this bill could be better spent on recruiting and attracting more fully trained law enforcement officers for our communities.

This bill is also concerningly vague as to what “state or county laws, rule, ordinances, or regulations” these private security guards would be hired to “enforce” and what powers would be granted to these hired guards to enforce laws and who will grant such powers. While the bill mentions laws “prohibiting camping, loitering, nuisance” it also leaves a gaping opening with the language relating to “other violations in public places.” Further, as we all know, a seemingly harmless interaction with someone who is suffering from mental illness or substance abuse can turn into a violent, deadly situation in a matter of seconds. This bill precariously leaves many questions unanswered such as whether the private security guards will be armed and properly trained on the use of deadly force. The last thing we want is our officers to come upon a scene with a private security guard wielding a firearm who lacks training in the use of force and firearm tactics. How will these private security guards be held accountable for their actions and how will the community even learn about their actions? Private security guards are not subject to the same level of internal and public accountability, scrutiny and disclosure mandates that our officers are faced with.

Without a police presence and having our officers patrolling your neighborhoods while you sleep at night, society cannot maintain its civility or its rule of law. Our Hawaii citizens understand and appreciate the community protection and law enforcement services provided by our police officers. However, this bill could soon lead to where public safety is a luxury only for the wealthiest communities with the highest TAT contributions, making our poorer communities even more vulnerable. There are far better ways to spend TAT monies than private security guards who do not have the same level of commitment to the communities they serve and to each other. Such monies should be dedicated to the recruitment, training, and retention of professional law enforcement officers.

Rather than looking for ways to defund and replace the police force, we respectfully suggest that another more effective way to address the widespread issue of loitering and camping in public places is to rally support for and pass measures that address the critical officer shortage our county employers are facing. One such measure is SB 206, which seeks to amend HRS §§ 88-73 and 88-99 to eliminate the minimum retirement age requirement while retaining the twenty-five years of service requirement for police officers to be eligible for retirement.

The Honorable Glenn Wakai, Chair
The Honorable Brandon J.C. Elefante, Vice-Chair
Senate Committee on Public Safety and Intergovernmental and Military Affairs
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Legislative support for bills like SB 206 will provide a much-needed incentive to recruit and retain more police officers for our communities.

If the legislature is going to address public camping, loitering, and nuisance violations, hiring private security guards is not the answer nor the approach we should take to address such issues. We thank you for allowing us to be heard and to share our concerns on this bill and hope your committee will unanimously reject this bill.

Respectfully submitted,

ROBERT "BOBBY" CAVACO
SHOPO President