



GOV. MSG. NO. 551

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

March 19, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB987 HD1 SD2, without my approval, and with the statement of objections relating to the measure.

HB987 HD1 SD2

A BILL FOR AN ACT RELATING TO POLICE
OFFICERS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

March 19, 2008

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 987

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 987, entitled "A Bill for an Act Relating to Police Officers."

The purposes of this bill are (1) to clarify the meaning of "acts done in the performance of the officer's duty as a police officer" for the purposes of determining if a police officer who is prosecuted or sued must be represented by an attorney provided by the county and (2) to specify that the police commission's request for a recommendation by the county attorney or corporation counsel regarding the entitlement of the police officer to counsel at county expense shall be responded to within seven working days.

Section 52D-8, Hawaii Revised Statutes, provides that whenever a police officer is prosecuted criminally or sued civilly for acts done in the performance of the officer's duty, the officer shall be represented at county expense or by the county. The amendment made by this bill will define the acts done in the performance of the officer's duty as a police officer to include any action while in a duty status or while the police officer is on duty, any action performed by an off-duty police officer while effecting an arrest or performing any other police duty, and any action performed by the police officer while on special duty status.

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As written, this bill is overly broad and could place the counties in a position that they would have to defend a police officer when he committed a criminal act. The bill very clearly provides that whenever there is a criminal case or civil case against an officer, and the acts the officer is claimed to have committed occurred while the officer was on regular or special duty, the counties must provide an attorney to represent the officer. Thus, an officer who, while on patrol, engaged in a drug deal or robbed a bank, would have an absolute entitlement to a county-paid attorney if criminally charged with possession of an illegal substance or bank robbery. As this bill is written, there are no exceptions -- so long as the officer is on duty, the officer gets a county-paid lawyer, regardless of the acts the officer commits.

We recognize the need for officers to be provided with legal representation when in the performance of their duties. However, there may be acts committed by a small minority of officers while in the performance of their duties that are not in the scope of an officer's authority as a police officer, i.e., activities such as the sale of narcotics, sexual assault, domestic violence, burglary. Officers should not be provided with legal representation in these or similar instances. Automatically affording officers legal representation would violate the trust bestowed by the citizens they are sworn to protect. Further, legal representation paid for by the individual counties in instances when a law enforcement officer commits criminal acts would blemish the reputation and integrity of all law enforcement officers and endanger the public's support in their Police Departments.

Additionally, the seven day timeline for a county's corporation counsel or county attorney to submit a recommendation

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to the police commission is, in the judgment of the counties, unrealistic and could cause the county police commissions to make decisions without proper recommendations and without the relevant investigative information. A proper investigation often takes weeks to complete.

We acknowledge that police officers' work places them in confrontational situations, which may lead to allegations of civil and criminal wrongdoing. We are sympathetic to the concerns expressed by police officers and by the State of Hawaii Organization of Police Officers, who are not confident that all deserving officers receive legal representation, and are concerned about the potential consequences of lawsuits and criminal charges and the effect on officers' morale and the manner in which they may carry out their duties. I understand the State of Hawaii Organization of Police Officers has worked with the counties over the past week to craft language that addresses the concerns of the counties, while ensuring representation for police officers when it is truly warranted.

I would support a bill that made it more likely that deserving officers would receive legal representation. I cannot support this bill with the serious language flaws described above.

For the foregoing reason, I am returning House Bill No. 987 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO POLICE OFFICERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 52D-8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+]§52D-8[+]~~ Police officers; counsel for. (a) Whenever
4 a police officer is prosecuted for a crime or sued in a civil
5 action for acts done in the performance of the officer's duty as
6 a police officer, the police officer shall be represented and
7 defended:

8 (1) In criminal proceedings, by an attorney to be employed
9 and paid by the county in which the officer is
10 serving; and

11 (2) In civil cases, by the corporation counsel or county
12 attorney of the county in which the police officer is
13 serving.

14 (b) For purposes of this section, "acts done in the
15 performance of the officer's duty as a police officer" shall
16 include, but not be limited to:

17 (1) Any action while in a duty status or while the police
18 officer is on duty;



1 (2) Any action performed by an off-duty police officer
2 while effecting an arrest or performing any other
3 police duty; or

4 (3) Any action performed by the police officer while on
5 special duty status."

6 SECTION 2. Section 52D-9, Hawaii Revised Statutes, is
7 amended to read as follows:

8 " ~~[+] §52D-9~~ ~~[+]~~ Determination of scope of duty. ~~[The]~~
9 Subject to section 52D-8, the determination of whether an act,
10 for which the police officer who is being prosecuted or sued,
11 was done in the performance of the police officer's duty, ~~[se-as~~
12 ~~to-entitle]~~ entitling the police officer to be represented by
13 counsel provided by the county, shall be made by the police
14 commission of the county. Before making a determination, the
15 police commission shall consult the county attorney or the
16 corporation counsel, who may make a recommendation to the police
17 commission with respect thereto if the county attorney or
18 corporation counsel so desires. If the county attorney or
19 corporation counsel of the county in which the police officer is
20 serving fails to provide the police commission with a
21 recommendation within seven days of the commission's request,
22 the discretion to make a recommendation shall be deemed waived



1 and the police commission may make a determination required of
2 this section without considering any recommendation by the
3 county attorney or corporation counsel. The determination of
4 the police commission shall be conclusive for the purpose of
5 this section and section 52D-8[-], but shall be subject to
6 judicial review."

7 SECTION 3. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon approval.

