

Honolulu, Hawaii

March 2, 2012

RE: H.B. No. 2751
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 2751, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO OFFENSES AGAINST PUBLIC ADMINISTRATION,"

begs leave to report as follows:

The purpose of this measure is to implement the Legislature's inherent authority established under Article III, section 18 of the Hawaii State Constitution to take action against disorderly or contemptuous behavior committed before a legislative body.

The House Sergeant-at-Arms and one concerned individual testified in support of this measure. The Gay, Lesbian, Bisexual and Transgender Caucus of the Democratic Party of Hawaii; Hawaii Citizens for the Separation of State and Church; League of Women Voters, and many individuals testified in opposition. The Department of the Attorney General and one concerned individual provided comments on this measure.

Your Committee finds that the legislative contempt power is constitutional, inherent, explicit and already embodied in the Hawaii State Constitution. In fact, the United States Supreme Court has long held that a legislature punishing contemptuous conduct is constitutional as the legislature has the inherent power to protect its processes and existence. *Groppi v. Leslie*, 404 U.S. 496, 500-501 (1972) ("Legislatures . . . possess inherent



power to protect their own processes and existence by way of contempt proceedings.").

In Hawaii, the statutory embodiment of this inherent power can be traced back to the territorial laws of 1900, wherein provisions recognizing and affirming the legislature's contempt authority under section 25 of the Organic Act, are nearly identical to the provisions of Article III, section 18 of the Hawaii State Constitution. This legislative contempt authority is analogous to the power provided to the state Judiciary through contempt of court, under section 710-1077, Hawaii Revised Statutes.

Your Committee notes that the Legislature's contempt authority is already codified under chapter 21, Hawaii Revised Statutes, originally enacted in 1969. Presently, three types of conduct are specified within section 21-14, Hawaii Revised Statutes:

- (1) Failure or refusal to appear in compliance with a subpoena or testify under oath or affirmation before a legislative body;
- (2) Failure or refusal to answer any relevant question or furnish any relevant material subpoenaed by a legislative body; and
- (3) Committing any other act or offense against a legislative body which would constitute contempt.

Any contempt charge initiated by the legislature under chapter 21, Hawaii Revised Statutes, is done through constructive contempt procedures, requiring the matter to be turned over to the Department of the Attorney General for proceedings in the judicial system.

The United States Supreme Court has consistently upheld the contempt authority of the legislature, defined its limits, and distinguished its proceedings. *Groppi v. Leslie*, 404 U.S. 496, 506-507 and 501 (1972) ("legislative contempt power should be limited to 'the least possible power adequate to the end proposed'") ("the panoply of procedural rights that are accorded a defendant in a criminal trial has never been thought necessary in legislative contempt proceedings.").

The United States Supreme Court has also held, that "a legislature, like a court, must, of necessity, possess the power to act 'immediately' and 'instantly' to quell disorders in the chamber



if it is to be able to maintain its authority and continue with the proper dispatch of its business." *Groppi*, 404 US at 503-504 (citing *Johnson v. Mississippi*, 403 U.S. 212, (1971) (summary contempt is appropriate in situations requiring instant action where misbehavior is immediately present and known, and immediate corrective steps are needed to restore order to maintain dignity and authority.) This summary contempt authority is analogous to the same power provided to our state Judiciary through summary contempt of court under section 710-1077(3)(a), Hawaii Revised Statutes.

Your Committee believes this summary contempt authority allows the legislative body to preserve its integrity and protect the public interest, without the involvement of the judicial system, while ensuring due process of law. *Evans v. Takao*, 74 Haw. 267, 288-289 (1992) (imposition of instant and summary punishment is appropriate, even in the absence of due and deliberate procedures.) This authority, however, should be reserved for exceptional circumstances that threaten order and decorum, and necessitate immediate action to protect the institution itself.

Your Committee believes it is prudent to clarify the types of contemptuous conduct prohibited during legislative proceedings, as well as articulate the specific procedures available to restore order to those proceedings. As such, your Committee has amended this measure by:

- (1) Inserting a purpose section;
- (2) Establishing the types of conduct prohibited with provisions similar to those under section 710-1077, Hawaii Revised Statutes, pertaining to:
 - (A) Disorderly or contemptuous behavior; and
 - (B) Breach of peace or disturbance;
- (3) Establishing summary contempt provisions and procedures similar to those under section 710-1077, Hawaii Revised Statutes, to include notice and opportunity to be heard;
- (4) Clarifying the authority of the sergeant-at-arms to arrest and remove a person from a legislative proceeding;



- (5) Reducing the severity of the penalty of imprisonment for legislative contempt from one year to ten days;
- (6) Requiring the respective houses of the Legislature to adopt rules to effectuate this measure; and
- (7) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2751, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2751, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



GILBERT KEITH-AGARAN, Chair



