

## *LATE TESTIMONY*

Testimony SB2551 LATE  
 Committee on Intergovernmental Affairs  
 Senator David Ige February 7, 2006 Room 225 3PM

Senator David Ige, Chair and Senators:

I have had almost ten years of experience as a Community member involved with issues of applications for Liquor Licenses, the procedure of a lawful protest against the granting of such a license, and their handling by Liquor Commission Members, Administration and Staff. Communities have addressed problems with this in many ways but not one has ever found a venue to take responsibility for the Liquor Commission. This Bill SB2551, and also SB2552-4 appear to be one separate Community's attempt to deal with their frustration and outrage at yet another example of circumstances, practices or customs that hinder an effective Citizens protest against a Liquor License.

I am opposed to the following provisions as appearing in any or all of these of these Bills SB2551-4

SB2551-top of page 4 first paragraph: (and as addressed in SB2552-4) If Liquor Commission does not reach a decision, and there is a majority of protest..... The Application is denied. Applications that receive a majority of Owner or Registered voter protests are statutorily denied. The Commission itself makes no decision, does not "deny the applications". In some cases, Applicants have attempted to characterize an automatic denial as a "decision of the Liquor Commission, and claim various articles of the Statutes to assert their right of appeal of "A DECISION BY THE COMMISSION". Existing statute seems clear that the LC has no discretion in the face of such a majority, and I see no need to further "muddy the waters" with language about the "Commission making a decision "

SB2551 and as addressed in SB2552-4 I am under the impression that these Bills propose reducing the time from 30 to 15 days for the LC to give a decision to grant or refuse a license, I would call attention to the fact that 1. There is a City? State law that is aimed at gaining a swift dispatch of License applications that was originally thought to be applicable only in the purely bureaucratic realms of construction, permitting and practical or objective matters.

2 In the case of purely subjective procedures such as obtaining evidence, considering it,, effecting public Notice, a reduction of the time to make a decision , even with allowance for "discretion" to extend it leaves a woefully short time from Thursday to Thursday for the LC to consider, format and publish intent to render a decision. Consider the example of Applicant The Irish Rose attempting to claim that the absence of one Liquor Commissioner from a Hearing was grounds to disqualify him from voting on the matter at the next meeting a shortening of the time allowed for a decision could only have reinforced a potential claim that this Commissioner had no means of learning what had occurred at the Commission Hearing, had no access to testimony, recordings or a transcript of the Hearing he missed, could not be updated or briefed by the ADMINISTRATOR, Chief supervisor, due to lack of time. The matter couldn't even be published for public discussion at a subsequent Liquor Commission Public Hearing.

The time given for rendering of a decision by the Liquor Commission should be 30 days. There should be no option to shorten it at the Commission's discretion. Opportunities for possible manipulation of the process should be minimized. It appears that Applicants for Liquor Licenses, and also possibly that individuals within the Liquor Commission , Commissioners, its A administration , Staff, and the Deputies to the Liquor Commission of the City office of Corporation Council allegedly can utilize vague and confusing rulings and allegedly have, on various occasions ,by documentation, allegedly engaged in procedures to manipulate, misstate, mis-apply, and /or omit mandates of HRS regarding Liquor and Liquor Commission Rules for the possible purpose of facilitating the process of a given premise obtaining a Liquor License.

I oppose the provision in these Bills where it appears in 2551-4 that "An application is denied when no action has been taken by the Liquor Commission"

This appears to be in response to the ordinance that requires the Granting of a license or permit when the licensing or permitting Agency has not taken action on the application within a certain period. It is inappropriate in the extreme for anyone to allow a body such as the Liquor Commission to be governed by such a statute. This scrupulous adherence to the law was allegedly applied in the case of the Application by Gloria Bridal Services Sea Life Park Santa Catalina Chapel, when the Commission was advised by Deputy Corp counsel that the Application would be automatically granted if they did not or could not vote by a certain date. Documents available indicate that a Quorum was not present on that date, and the License was granted over strenuous community opposition.

I propose

An Amendment to SB 2551-4 wherever the matter is addressed: "The Liquor Commission is specifically excluded from any ordinance, rule or statute requiring automatic granting of a "License" for lack of action regarding any matter under its jurisdiction.

I OPPOSE any material in these Bills SB2551-4 which addresses the matter of allowing any adjustments or updates to Voter Registration Lists. Except by designated bodies under HRS regarding Elections

I have the honor of being a member of the Community whose esteemed advocate, the late Melody Tang Lam, made the request to the Attorney General of the State of Hawaii which resulted in the decision that Voter Registration Lists could be released to Citizens for the Legitimate Governmental Purpose of a Liquor License Protest. (Before that, Liquor License Applicants and their agents, but not citizens had full access to the lists. Hawaii Election Laws result in the continuing situation of the Voter Lists being bloated with outdated and inaccurate listings. It is truly frustrating and burdensome for any community attempting to obtain the 50% plus 1 signatures for automatic denial of a liquor License.

However, the presence of the name on the Voter Registration list grants the franchise of that person to protest or ignore a Liquor License application. No entity, agency or individual can take any action to deny, defer, or abridge that franchise as long as the name remains on the list.

In Regard to another matter of HRS regarding Liquor to which these Bills propose amending, I propose to add further Amendments to each of the Bills Before you: SB2551 SB2552 SB2553 SB2554

On the last page of each Bill (third from last paragraph) : that will come before you in this matter regarding Liquor - SB2551 (SB 2552, SB2553, SB2554, you will see a Section of HRS, 281-59, Section 2 subsection (a) that was amended by you, collectively, those who were in the Legislature in 2003. Both the House and the Senate passed the Bill amending the language of HRS 281-59 2 (a) defining an Owner of Property within 500 feet of a proposed licensed premise to read

- (a) "For purposes of defining a majority of owners and lessees of real estate...EACH PROPERTY COUNTS ONLY ONCE.

This language appeared in the original 2003 bill submitted to a Committee headed by then- Representative Ken Hiraki and was explained to that Committee as a typographical error. Testifiers requested a correction to "Each Property Owner counts only once."

Senators, a "property" does not have a vote. This provision was specifically aimed at Applicants and Liquor Commission Staff allegedly often telling the public that if someone had more than one property they appeared on the Owners list for each property and their multiple names were counted in the total number from which a 50%plus 1 protest had to be obtained. Applicants and their agents allegedly specifically targeted owners of multiple properties and properties with multiple owners to convince them not to send in a protest, or withdraw a protest they had already submitted.

- (b) "A protest SUBMITTED BY THE MAJORITY of co- owners... ..shall constitute a protest by all..."

This language appeared in the original Bill as an apparent attempt to ease the burden of Protestors in obtaining the signatures of all the multiple Owners of property who could not be notified or reached to be given an opportunity to submit their protest, often even by their co-owners. Testifiers to the Original Bill requested the removal of this provision, on the grounds that no matter how it might facilitate obtaining a protest, the co-owners retained the franchise to lodge or not lodge a protest, which could not be statutorily denied or abridged on the grounds of "unavailability". . **NOTE** At the same time the Applicant for a Liquor License was only required to notify ONE listed Owner for each property, deemed to be "notice to all" although all the co-owners names remained on the master list from which Protestors were required to obtain 50%+1 signatures.

(c) "OWNERS OR LESSEES WHO OWN MORE THAN ONE PROPERTY MAY COUNT EACH PROPERTY."

This language did not appear in the original Bill. It appeared in a version" as amended by the Committee", presented at the second Hearing by that Committee. Legislators-this is a negation of the Constitutional principle of ONE PERSON ONE VOTE. No One is entitled to have more than one say in a community matter on the basis of how much or how many "Properties" owned. An Owner of Real property within 500 feet of a proposed Premise for a Liquor License is just that-AN Owner. If that person WERE to be allowed this discriminatory and unequal privilege, how would it be determined that a person who owns four 8,000 foot properties within the 500 foot eligibility circle, is more deserving of a much greater say in granting a nearby Liquor License than someone who owns 20 plus ACRES in one parcel that falls all or in part within that same circle???

Outraged citizens inquiring of then-Representative Hiraki's Aide how they could have been ignored, (and a further odious provision added), were told "It was the price of the bill going Forward". After testimony against these provisions was given in Hearings in other Committees, the Bill went to a Conference Committee Chaired by then Representative Hiraki. Community members and sponsors of the Bill were assured that all three provisions had been removed from the final version approved by Conference Committee. When Community members saw the version of the Bill that went to then-Governor Cayetano, they discovered that these provisions had not been removed. Then-Representative Hiraki told the Bills Sponsors that he had been told the provisions were "harmless". Despite Protests to the Then -Governor of the violation of democratic principles in the Bill, he signed it into Law.

In the TWO following Legislative sessions 2004 and 2005 Bills were introduced to remove these provisions from HRS 281-59-Section2 (3) regarding Liquor. In 2004 it was not heard beyond the first Senate Committee. In 2005 the Bill was passed all but unanimously by the Senate except for a nay vote by Senator Gordon Trimble.

Representative Eric Hamakawa received numerous phone calls and testimony requesting him to hear the Bill in Committee. Despite numerous put-offs that led the community to believe he would do so, he did not, and the Bill died. We were told that the provisions inserted in the HRS regarding Liquor greatly facilitate the defeat of Liquor License protests. When Corporations or Time Share Entities or REITS (Real Estate Investment Trusts) hold multiple "properties" within 500 feet of a proposed premise, the ability to vote each and every one of their "properties" as a separate vote, could overwhelm the protest votes by individual Owners within the permitted 500 feet.

Just as your fellow Legislators saw fit to amend and add to a Bill before them, I am asking you to do the same thing with these Bills-use them as a vehicle to rid the law of these odious provisions before any more citizens rights are as systematically trampled and subverted. And-spare the citizens planning a constitutional challenge to these provisions the time and expense of exposing this matter in detail.

Proposed amendment in each of Bills SB2251-4 to read:

AMEND HRS 281-59 Section 2 subsection (a) to read:  
Each Property Owner or Lessee counts only once.

Amend HRS281-59 2 (a) by DELETE: "A protest submitted by the majority of the co-owners or co-lessees of a property shall constitute a protest by all the owners or lessees of record of that property."

Amend HRS 281-59 2(a) by DELETE "Owners or lessees who own more than one property may count each property."

Thank you for your consideration of this testimony

Respectfully Submitted     Marguerite G Ig