



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2515, RELATING TO THE PENAL CODE.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND
HEALTH

DATE: Thursday, February 6, 2020 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Clare E. Connors, Attorney General, or
Kory W. Young, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General supports the bill, but recommends the following amendments.

S.B. No. 2515 seeks to ensure the security of Hawaii's critical electrical infrastructure by making trespassing onto these properties a class C felony.

The Department would recommend the following wording for subsection (1)(b) of the offense on page 2, lines 7 through 9:

(b) The person intentionally, knowingly, or recklessly enters or remains unlawfully on property that belongs to a critical electrical infrastructure company.

At present, subsection (1)(b) only requires that a person possess a reckless disregard that a property belongs to a critical electrical infrastructure company, but lacks an overt voluntary act that would trigger a prosecution. The Department recommends requiring that the trespasser "enters or remains unlawfully" on the property, as this would provide the State with an overt voluntary act upon which to base a prosecution for this offense. Adding the intentional and knowing states of mind to the offense would make it easier to explain the charge to a jury, without making the offense more difficult to prove.

The Department also recommends that the bill be amended to add an additional subsection:

“(4) Entering or remaining unlawfully on the premises of a critical electrical infrastructure shall constitute prima facie evidence of a person’s intention to commit thereupon a crime against a person or against property rights.”

Creating this presumption would greatly increase the efficacy of the bill, and better address the concerns articulated in section 1. Without this presumption, the State may not be able to prove, beyond a reasonable doubt, that trespassers who are caught within a critical electrical infrastructure, intended to commit a crime against a person or property rights, unless the crime has already occurred.

In instances where the trespasser had an innocent reason for entering or remaining upon the premises of the critical electrical infrastructure, the trespasser could present testimony and/or evidence to rebut the presumption. In these cases, the bill could provide that persons determined to have been trespassing on the premises of a critical electrical infrastructure, but who were found not to have the intent to commit a crime thereupon, would be guilty of a misdemeanor.

Subsection (2) on page 2, line 10, describes when “an act occurs in the course of committing the offense,” but, this phrase does not appear elsewhere in the bill. To avoid confusion when charging this offense, it would be helpful to either delete this subsection, or to provide an indication regarding how this phrase is to be used within the bill.

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



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
COMMERCE & CONSUMER PROTECTION**

S.B. 2515

Relating to the Penal Code

Thursday, February 6, 2020
9:30 a.m., Agenda Item #5
State Capitol, Conference Room 229

Cary Okimoto
Security Supervisor
Hawaiian Electric Company, Inc.

Dear Chair Baker, Vice Chair Chang, and Members of the Committee,

My name is Cary Okimoto and I am testifying on behalf of Hawaiian Electric Company, Inc. (Hawaiian Electric) in **support of S.B. 2515**, Relating to Critical Electrical Infrastructure. The purpose for this bill is to protect the public and electric utility employees from the serious dangers associated with compromised electrical infrastructure and to ensure the resilience of the electric grid that residents, businesses and others rely on for the delivery of safe, clean and reliable electricity.

Under the current law, existing trespass laws do not provide a proportionate level of protection for such a critical and essential resource. Currently, if an individual is convicted of Criminal Trespass in the First Degree (708-813), he or she may receive up to a year in jail and/or pay a fine of up to \$1,000, which is not enough of a deterrent. Hawaiian Electric's secured facilities, many of which are high-voltage and dangerous environments, are compromised on a regular basis, and while we have implemented tools to deter such activity, including but not limited to, securing our facilities with fencing and installing cameras and signage, these tools are not sufficient in deterring

trespassing of our critical facilities. Hawaiian Electric believes with increased penalties – it would be a stronger deterrent to those who unlawfully access Hawaiian Electric properties and intentionally or knowingly commit acts of vandalism or theft in pursuit of personal gain or benefit. The impact and duration of a major electrical outage caused by those individuals could last for days or even months. The outages caused by trespassers result in immeasurable costs to our State’s residents, businesses and military partners.

Accordingly, Hawaiian Electric strongly supports S.B. 2515. Thank you for this opportunity to testify.