



GOV. MSG. NO. 877

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 8, 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 SB2341 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB2341 SD1 HD1 CD1

A BILL FOR AN ACT RELATING TO PUBLIC  
SAFETY.

Sincerely,

  
LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2341

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, Senate Bill No. 2341, entitled "A Bill for an Act Relating to Public Safety."

The purpose of this bill is to require that all contracts between the State and a "nongovernmental entity" for the housing of Hawaii inmates out of state include a provision ordering contractors to allow access to information under chapter 92F, Hawaii Revised Statutes.

This bill is objectionable because it is unnecessary, unfair, and vague. It is unnecessary because information requested can be obtained and disclosed by and through the Department of Public Safety. Currently, information regarding out-of-state correctional facilities, such as audit reports, contracts, and corrective action plans, are online and accessible to the public via the Department of Public Safety's website. Moreover, printed copies are also available upon request.

This measure is unfair because no other contractor with the State is required to comply with chapter 92F, Hawaii Revised Statutes. Moreover, requiring private prison contractors to comply with information requests will create a chilling effect on competitive bidding and procurement, which could lead to increased costs for housing Hawaii's inmates. In the event no firms bid due to these requirements, some or all of the 2,300 inmates now located out-of-state might need to be returned to

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already overcrowded facilities in the State.

Finally, this measure is vague and ambiguous as to the information required to be disclosed, the basis for nondisclosure, the procedures that the contractor and requestor of information are to follow, and the entity responsible for handling disputes. Chapter 92F is drafted and defined in such a way that it applies to government records maintained by government agencies, and the Office of Information Practices' scope of authority does not include enforcement of contractual obligations. As a result, it is unclear how this bill can be implemented or enforced.

For the foregoing reasons, I am returning Senate Bill No. 2341 without my approval.

Respectfully,



LINDA LINGLE  
Governor of Hawaii

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# A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1           SECTION 1. The legislature finds that since 1996, Hawaii  
2 has transferred prisoners to private prisons on the United  
3 States mainland to ease overcrowding in Hawaii state prisons.

4           Currently, Hawaii has contracted with one vendor,  
5 Corrections Corporation of America, to house and provide  
6 services for all prisoners transferred out-of-state, except for  
7 those transferred under the Interstate Compact Act.

8           The legislature further finds that despite the \$50,000,000  
9 in public funds expended annually for this purpose, these  
10 contracts have never been posted on the department of public  
11 safety's website and information concerning these contracts and  
12 their enforcement has never been accessible to the public.

13           The purpose of this Act is to provide accountability and  
14 transparency to the public regarding the services provided by  
15 any vendor for any contract made with the State to house Hawaii  
16 prisoners.



2341

1 SECTION 2. Chapter 353, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§353- Freedom of information requirement; contracts  
5 with out-of-state detention facilities. (a) Contracts made  
6 directly between the State and a nongovernmental entity or  
7 through an interstate compact that provide for the incarceration  
8 or detention of state prisoners or detainees in a privately  
9 owned prison or other out-of-state detention facility shall:

10 (1) Require the contractor to provide access to the same  
11 information as is required of the department of public  
12 safety in chapter 92F; and

13 (2) Include the same remedies for the failure of  
14 contractors to provide information as provided for  
15 against government agencies in chapter 92F; provided  
16 that these remedies shall not be available for  
17 information that is entitled to protection pursuant to  
18 section 92F-13 or is a trade secret pursuant to the  
19 definition provided in section 482B-2.

20 (b) For purposes of this section, "privately owned prison  
21 or other out-of-state detention facility" means any privately  
22 owned prison or other out-of-state detention facility that



1 incarcerates or detains prisoners or detainees pursuant to a  
2 contract with the State."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect on July 1, 2008.

