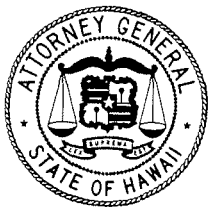


SB2277



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2277, RELATING TO THE HAWAII PUBLIC HOUSING AUTHORITY.

BEFORE THE:

SENATE COMMITTEE ON EDUCATION AND HOUSING

DATE: Wednesday, February 3, 2010 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Nalani Wilson-Ku, Deputy Attorney General

Chair Sakamoto and Members of the Committee:

The Department of the Attorney General brings to this Committee's attention the following legal concerns.

Section 4 amends section 356D-93, Hawaii Revised Statutes (HRS), which applies only to federal low-income housing, to require evictions from state low-income housing to be administratively conducted by a hearings officer. This provision conflicts with section 356D-44(c), HRS, which requires state low-income housing project evictions to be pursued under chapter 521, HRS, the Residential Landlord-Tenant Code. Chapter 521 mandates evictions through judicial summary possession proceedings, not through administrative hearings proceedings.

Section 4 also requires the hearings officer and eviction board to solicit information about a tenant's regular participation in the tenant's child school activities and to use such information in their findings, conclusions of law, decision and order. There is, however, no relationship between a tenant's involvement in a child's school activities and whether the tenant has violated the rental agreement with the authority.

Moreover, Section 4 creates an impermissible preference in settling eviction actions in favor of a family having a school-

aged child over a family having no such children. Familial status discrimination is prohibited under chapter 515, HRS, the fair housing law, and section 356D-7, HRS, for real property transactions, including the rental or lease of real property. Section 4's discriminatory application against families having no children runs afoul of the prohibition against familial status discrimination in housing under chapter 515.

Section 6, which amends the general powers within section 356D-4, HRS, prohibits the authority from selling any land developed for any public housing project. Although the measure's purpose is to prevent the authority from selling land developed for "any public housing project," section 6 only refers to federal low-income housing projects, since the definition of the term "public housing project," in section 356D-1, HRS, is limited to the federal low-rent public housing program. "State low-income housing" is defined in section 356D-51, HRS, for the purpose of the subpart III.B. OF CHAPTER 356D, HRS, only. If section 6 is meant to apply to state low-income housing, then the measure should be amended accordingly. We suggest further that the term "state low-income housing project" be defined within section 356D-1, HRS, for clarity on this issue.

This measure further fails to amend section 356D-8(c), HRS, by which the authority presently possesses the power to sell, exchange, transfer, assign, or pledge any real or personal property interest to any person. In the absence of such amendment, the provisions of section 6 would conflict with the powers granted to the authority in section 356D-8(c), HRS.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
POST OFFICE BOX 17907
Honolulu, Hawaii 96817

EXECUTIVE ASSISTANT

Statement of
Barbara E. Arashiro
Hawaii Public Housing Authority
Before the

SENATE COMMITTEE ON EDUCATION AND HOUSING

February 3, 2010 1:15 P.M.
Room 225, Hawaii State Capitol

In consideration of
S.B. 2277

RELATING TO THE HAWAII PUBLIC HOUSING AUTHORITY

The Hawaii Public Housing Authority (HPHA) opposes S.B. 2277 as currently written. HPHA agrees with some provisions, but others would cause significant problems for the agency and its residents.

1. Assess a common area fee on all residents of state public housing

HPHA opposes this provision. While HPHA agrees with the idea that residents of public housing should cover as much of the costs of that housing as they are able, we think the rent charge should be the vehicle for the recovering the normal costs of providing housing.

Residents of state public housing are billed for rent each month, and are charged for repair of damages caused by the tenant or guests. Rents are set at a level that balances the cost of providing housing against the limited financial resources of the low-income residents. Having separate charges for other items would not only be confusing for residents, many of whom are elderly or non-English speaking, but may also be financially burdensome.

Developing a separate charging, billing and collection system for a common area fee would be administratively burdensome for Hawaii Public Housing Authority. It would involve a new process of defining "common area expenses" in administrative rulemaking, determining what the actual labor and materials costs are, setting up separate record keeping, (they are not tracked separately now) and adding a separate monthly charge on each unit's rental billing.

Instead, building into the rent levels whatever costs the state needs to recover would be quicker, less costly for HPHA and less confusing for residents.

2. Streamline procedural requirements

HPHA supports this streamlining of the unnecessarily long eviction process in HRS §356D-92.

3. Require evictions from state public housing to be conducted by a hearings officer

HPHA does not support the change from the current process required by HRS 356D-44(c), which makes state public housing, including evictions, subject to the provisions of HRS Chapter 521, the Residential Landlord-Tenant Code.

4. Require an eviction board or hearings officer to consider a tenant's involvement in the tenant's child's school in making a determination

HPHA strenuously opposes this provision because it would tie up the evictions process, send an erroneous message to tenants, and reduce rental revenues, thereby reducing funds available for renovating and operating public housing. More importantly, it could delay removal of dangerous people from public housing. State and federal guidelines for evictions, and HPHA's procedures, already provide numerous safeguards and opportunities for tenants to avoid eviction by correcting errors, having rents lowered when income has fallen, and entering into payment plans.

Because of these safeguards, evictions almost always involve tenants who are either dangerous to their neighbors; who have violated state or federal laws; or who have many months of rent due and who have refused to enter into repayment agreements or refused to comply with them. To stop the eviction process at the point of the hearing in order for the Eviction Board to gather information on involvement with school, and then ask the Board to consider whether this involvement excuses non-payment of rent or the dangerous behavior that caused the eviction process is harmful to the other residents and to the finances of the State. This also sends a message that compliance with the terms of the lease and with the law is possibly optional as long as the parent is involved with their child's schooling. HPHA does not support this proposition.

5. Prohibits the authority from selling any land developed for any public housing project

HPHA opposes this provision because it is duplicative of other federal and state oversight of the use of public housing lands, and may interfere with the efficient operation of public housing. Act 176, Regular Session of 2009, provides for legislative approval of any sale of state land. In addition, the HPHA Board of Directors and HUD must approve sale of public housing lands. That oversight is a much more effective way to manage state lands than a blanket prohibition that does not take into account the circumstances involved.



Committee: Committee on Education and Housing
Hearing Date/Time: Wednesday, February 3, 2010, 1:15 p.m.
Place: Room 225
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 2277, Relating to the Hawaii Public Housing Authority

Dear Chair Sakamoto and Members of the Committee on Education and Housing:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to S.B. SB 2277, which seeks to make a number of changes, one of which being to eliminate most procedural requirements to hearings for eviction of tenants from public housing.

Eliminating most of the procedures required for evictions will likely result in the violation of tenants’ constitutional due process rights and the eviction of innocent individuals. The current eviction process appropriately balances public housing tenants’ constitutional due process rights with the needs of the Hawaii Public Housing Authority and should be maintained.

Further, we should not be considering ways to make it easier to evict public housing tenants, some of our most vulnerable citizens, in this time of high and rising unemployment. Evicting these already low-income individuals will stretch our homeless resources to the breaking point. Hawaii would be better served by providing assistance and due process to individuals threatened with eviction.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Kanani Kaaiawahia Bulawan

TESTIMONY – SUPPORT w/ COMMENTS
SB 2277: RELATING TO PUBLIC HOUSING; COMMON AREA EXPENSE;
HEARINGS

TO: Sen. N. Sakamoto, Chair, Sen. M. Kidani, Vice Chair, and members of Senate Committee on Education and Housing

HEARING: Wednesday February 3, 2010 1:15 PM CR: 225

Aloha Chair Sakamoto, Vice Chair Kidani, and members of the committee:

I request for your **SUPPORT with comments offered to SB 2277** relating to common area assessments and hearings for eviction from State Public Housing. I'm Kanani Kaaiawahia Bulawan, a homeowner resident of Waianae and the retired executive director of Waianae Community Outreach, a non-profit agency managing the emergency homeless shelter in Kalaeloa and providing homeless outreach services to those on the leeward coast.

I support the intent of this bill and the language written; however, I would be cautioned about the "common area" without describing those areas. I would suggest a "maintenance fee" charged monthly aside from rent as most resident associations do to meet the on-going expenses of maintaining common areas shared by all.

As to the eviction process, creating hearings officer makes better sense than for an eviction board in which a tenant is appointed from the very housing in which a tenant is pending eviction. As retaliation is feared for participation, a tenant from another housing community should be appointed to hear evictions. This would allow for possible increase in tenant participation to the fair housing process.

Every tenant should be paying a fair share of rent, cost of repairs and maintenance for the areas that are shared by all. In the same token every tenant should be given fair process for eviction determination. I'm only concern with the clarity to describe "common areas" as most associations outline the "common areas" and the expectations of use and care. We should be clear to include this in the lease of tenants being affected. And, the "one member shall be a tenant" on the eviction board should be from another housing community.

Mahalo once again, this makes sense; however, we need some clarity.

**TO: The Honorable Norman Sakamoto , (Chair)
The Honorable Michelle Kidani , (Vice Chair)
and Members of the Housing Committee**

**DATE: Wednesday, February 03, 2010
1:15 PM Room 225**

RE: SB 2277 Relating to Public Housing

POSITION: STRONG SUPPORT

My name is Fetu Kolio, I am a Community Resident of Kalihi-Palama and a resident of Mayor Wright Homes, Public Housing. And as the new elected Tenant Association (President) , I also serve as one of the members of the Kalihi-Palama Neighborhood Board No.#15 .

SB 2277, would requires eviction from State low-income housing To be conducted by hearing officers appointed by the authority that would clarify that for federal low-income housing, hearings shall be conducted by eviction board. And that prohibits the authority from selling any land developed for any public housing project.

Please pass SB 2277, Thank you for hearing this bill and my testimony.

**Mayor Wright Homes
Fetu T, Kolio**