

NEIL ABERCROMBIE
GOVERNOR



DENISE M. WISE
EXECUTIVE DIRECTOR

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

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
Denise M. Wise
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON FINANCE

February 15, 2011 3:00 P.M.
Room 308, Hawaii State Capitol

In consideration of
H.B. 231 H.D. 2
RELATING TO PUBLIC HOUSING

Mister Chair and Members of the House Committee on Finance, thank you for the opportunity to provide you with comments regarding House Bill 231 as amended in House Draft 2, relating to public housing.

The Hawaii Public Housing Authority (HPHA) appreciates the intent of this measure; however, we oppose enactment of the measure since it would be administratively difficult to enforce and would have adverse budgetary impacts. While the HPHA appreciates legislative concern for increasing security protocols at our developments, we do not believe that this bill offers the most effective solution to controlling access to our properties. The HPHA believes such a policy would be most effective in partnership with tenant associations and in conjunction with community policing and tenant awareness programs. It is through such initiatives that tenants and the agency can work together make our communities safer.

Establishing a program that would require any visitors to an HPHA property to obtain a guest pass would be an administratively onerous policy for the agency to initiate and enforce. Several of our housing developments are large properties, with open pedestrian and vehicular connections to neighboring communities. Such a policy would require the enclosure of vast open spaces or impact to natural landscapes and would result in the physical separation of our residential communities from their neighborhoods in order to allow management full control over ingress and egress.

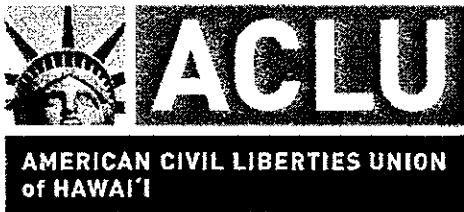
This visitor pass policy would have adverse budgetary impacts on the agency that are disproportionate to the benefits of the policy change. Many of our developments are small and are located in rural, remote areas. The required construction of access controls and the additional staff necessary to provide constant supervision of guest ingress and egress identifying consistent and predominant trespassers would defeat any public safety cost savings incident to this measure.

Further, this bill as amended would place persons who consistently utilize pedestrian pathways that cross public housing developments in danger of criminal liability. Our communities are part of their surrounding neighborhoods and management should be permitted to allow commuting to occur between residences, nearby schools, bus stops, and businesses. This policy would criminalize the daily traffic of school children across many of our developments as consistent trespassers, or require management to issue visitor passes every day to such commuters.

The measure also seeks to expand criminal trespass in the first degree to include remaining unlawfully upon the premises of any public housing project. The HPHA opposes this amendment to the criminal trespass law as unnecessary and duplicative of current policy. Our properties are already protected by criminal trespass statutes currently in force, and those developments which tend to experience trespass issues already possess signs and safeguards notifying potential trespassers of liability. The HPHA supports strengthened criminal trespass policy as embodied in Senate Bill 907, which essentially mirrors HPHA's trespass policy.

The HPHA opposes the establishment of a two-year pilot project for Mayor Wright homes, as written in the amended bill, Section 3. The agency feels that this is a policy change which is exactly the type of decision making the Legislature has entrusted to the HPHA's Board of Directors through its rulemaking and policy development powers. The HPHA feels that the determination of a revised, property-specific security policy is one that is soundly within the Board's purview and would respectfully request the Legislature to allow the Board to exercise its governance in the development of such policies. The HPHA would prefer the development of such policy to be undertaken through an agency developed methodology that would allow us to incorporate participation from public safety officials, our Resident Advisory Board, property management staff, and the tenants that would be directly impacted by this measure.

The HPHA appreciates the opportunity to provide the House Committee on Finance with the agency's position regarding H.B. 231 H.D. 2. We respectfully request the Committee to hold this measure.



Committee: Committee on Finance
Hearing Date/Time: Wednesday, March 2, 2011, 2:00 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 231, HD2,
Relating to Public Housing

Dear Chair Oshiro and Members of the Committee on Finance:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to H.B. 231, HD2 for the following reasons:

- 1) **The police already have the authority to physically arrest those charged with *Simple Trespass*, which renders this bill unnecessary.**

House Stand. Comm. Rep. No. 330-08 (2008) states that "HPD indicated that public housing projects are considered a quasi-private area, which has prevented arrests for public consumption of liquor and trespassing. This measure would allow arrests to be made."

This proffered justification for this bill (which is similar to that proposed for Act 50 of 2004) is *patently false*. First, the offense of simple trespass as set forth in H.R.S. § 708-815 applies to "premises" which is defined as any building or real property and includes public housing projects. Second, H.R.S. § 803-6(b) specifically authorizes the *optional* use of a citation by the police in lieu of an arrest where the offense involved is "a misdemeanor, petty misdemeanor or violation." For over 25 years, it has been clear that §803-6(b) allows police to physically arrest an individual for a violation. *State v. Kapoi*, 64 Haw. 130, 637 P.2d 1105 (1981) (holding, *inter alia*, that physical arrest for simple trespass was authorized by §806-3(b)). Indeed, in enacting §803-6(b), the Legislature intended to "provide for an optional use of the citation in lieu of arrest. *The police officer could still make a physical arrest if the situation necessitated such an action.*" House Stand. Comm. Rep. No. 712 (1975), House Journal, at 1303 (emphasis added).

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2) Extending the Criminal Trespass Statute to public housing poses grave constitutional concerns similar to those of Act 50 of 2004

Extending the current criminal trespass law to quasi-public property poses grave constitutional concerns similar to those of Act 50 of 2004. As some members may recall, in 2004, to combat the “squatting” problem, the legislature proposed an amendment to H.R.S. § 708-814 that simply inserted the words “public property” two times into an existing criminal trespass statute that had applied to commercial premises only. Act 50 of 2004 amended H.R.S. § 708-814 (hereinafter referred to as “Act 50” or “708-814”) to transform it into a vaguely worded law sweeping in its scope. By its very terms, § 708-814 provided that anyone can be banned from public property for up to one-year simply by being given a written trespass warning “stating that the individual’s presence is no longer desired on the property....” H.R.S. § 708-814(1)(b) (2004).

Although Act 50 of 2004 was proposed to the Hawaii legislature as a necessary tool to combat the homelessness problem, Act 50 was nothing less than a return to the street-sweeping laws of America’s past and no different in substance than those constitutionally infirm laws.

On September 7, 2004, the ACLU of Hawaii filed a lawsuit challenging the validity of Act 50 as to public property on the grounds that it was unconstitutional and gave public officials overly broad powers to ban individuals from using public spaces such as beaches, streets or sidewalks. The lawsuit was based on over six decades of U.S. Supreme Court precedent that condemned the inherent vagueness of laws like the challenged statute. The lawsuit was additionally premised on settled principles of due process as well as the fundamental right to move freely (which is protected under both the U.S. Constitution and Article I, § 2 of the Hawaii Constitution) and traditional First Amendment freedoms.

In 2005, the Legislature, mindful of the sweeping and unintended impact of Act 50, recognized the call to repeal Act 50 and did so for the benefit of all residents and visitors to Hawaii.

3) H.B. 231, HD2, Is Potentially More Dangerous Than Act 50 of 2004

Given the nature of public housing projects, the proposed bill may pose even greater dangers than Act 50. For example, it is possible that the grounds of a particular public housing development should be treated as a public forum. Restricting access to these areas (which are public in nature) would overextend trespass statutes and may very well violate the free speech and association rights of both tenants and visitors.

Hon. Rep. Oshiro, FIN Committee
and Members Thereof
March 2, 2011
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This unnecessary, misguided and potentially unconstitutional measure does not accurately reflect sound public policy. We strongly urge the legislature to hold this measure.

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

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**TO: The Honorable Marcus R. Oshiro,
The Honorable Marilyn,
And Members of the Finance Committee**

**Chair
Vice Chair**

**DATE: Wednesday, March 02, 2011
2:00PM Room 308**

RE: HB-231,HD2 Relating to Public Housing

POSITION: STRONG SUPPORT

My name is Leonard Lester, as a resident of public housing we need this bill HB-231,HD2 because safety is the main reason why all State Public Housing Tenants, pay rent \$\$.

HB-231,HD2 would help put a safety plan for tenants by the property owner (H.P.H.A.) because we pay rent to live and appreciate having a place that we call our home at Mayor Wright Homes, public housing.

We have gangs, drugs, also attacks on Community Residents and tenants of Mayor Wright Housing, Public housing.

Thank you for hearing this bill and my testimony please help pass HB-231,HD2.

Leonard Lester,

(Mayor Wright Resident)

TO: The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
And Members of the Finance Committee

DATE: Wednesday, March 02, 2011
2:00pm Room 308

RE: HB 231,HD2 Relating To Public Housing

POSITION: STRONG SUPPORT

My name is Fetu Kolio, I am the Mayor Wright Tenants Association President, also the Citizens Patrol block captain for Mayor Wright Housing we are the eyes and ears of our community, and I serve as a member of the Kalihi-Palama Neighborhood Board.

HB-231,HD2, would tremendously help restore the integrity of Services from public housing Authority, also a vital tool for the Honolulu Police Department in fighting crime in and around public housing.

Requiring visitors to have a pass upon entrance of a public housing is a privilege, also it will help to deter criminal activities by criminal elements, in and around public housing.

Thank you, please help restore integrity & accountability help pass HB-231,HD2.

FETU KOLIO,



(Mayor Wright Tenants)
(Association, President)