

NEIL ABERCROMBIE
GOVERNOR



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DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
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Statement of
Denise M. Wise
Hawaii Public Housing Authority
Before the

**SENATE COMMITTEE ON HUMAN SERVICES
SENATE COMMITTEE ON JUDICIARY AND LABOR**

March 22, 2011 1:30 P.M.
Room 016, Hawaii State Capitol

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

Madam Chair and Members of the Senate Committee on Human Services and Mister Chair and Members of the Senate Committee on Judiciary and Labor, thank you for the opportunity to provide you with comments regarding House Bill 231 as amended by 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 impact on the priorities contained within the Executive Biennium Budget. 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.

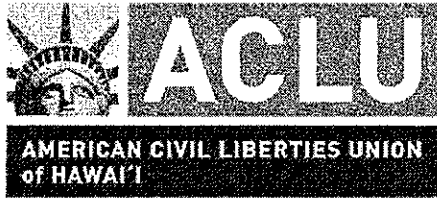
The HPHA strongly opposes Section 1 of the measure, which would establish a program requiring any visitors to an HPHA property to obtain a guest pass. Implementation of such a program would be an administratively onerous policy for the agency. Several of our housing developments are large properties, with open pedestrian and vehicular connections to neighboring communities. A visitor pass 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.

The visitor pass policy contained in Section 1 of the measure would have adverse budgetary impacts on the priorities contained within the Executive Biennium Budget that are disproportionate to the benefits of the policy change. Some of our other developments are small and are located in rural, remote areas. The required construction of access controls and the hiring of additional staff necessary to provide constant supervision of guest ingress and egress would defeat any public safety cost savings incipient to this measure. These increased costs to the agency are not included in House Bill 200 as amended by House Draft 1, the Governor's recommended Biennium Budget, and would come at the expense of the other critical priorities considered therein.

The Senate Committee on Human Services previously expressed recognition of these difficulties when it deferred Senate Bill 910 on February 3, 2011. The Committee asked the HPHA to address security improvements internally, through house rules and through the administrative rules process, providing the agency with a meaningful opportunity to address safety concerns. Property management staff has been working to meet the expectations of the Legislature by improving signage and enforcement at key properties that have experienced security issues in the past. The HPHA respectfully requests the Committees to support the Governor's recommended Biennium Budget, which would fully fund security costs for HPHA properties and further the work already being undertaken by the agency.

The HPHA strongly opposes Section 3 of the measure, which requests the establishment of a two-year pilot project for Mayor Wright homes. 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 would note 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 Senate Committee on Human Services and the Senate Committee on Judiciary and Labor with the agency's position regarding H.B. 231 H.D. 2. We respectfully request the Committees to hold this measure.



Committee: Committees on Human Services and Judiciary and Labor
Hearing Date/Time: Tuesday, March 22, 2011, 1:30 p.m.
Place: Room 016
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 231, HD2,
Relating to Public Housing

Dear Chairs Chun Oakland and Hee and Members of the Committees on Human Services and Judiciary and Labor:

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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Chairs Chun Oakland and Hee, HMS and JDL Committees,
and Members Thereof
March 22, 2011
Page 2 of 3

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.

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March 22, 2011

Page 3 of 3

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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ChunOakland2 - Tyrell

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 18, 2011 12:04 PM
To: HMS Testimony
Cc: toddhairgrove@yahoo.com
Subject: Testimony for HB231 on 3/22/2011 1:30:00 PM

Testimony for HMS/JDL 3/22/2011 1:30:00 PM HB231

Conference room: 016
Testifier position: support
Testifier will be present: Yes
Submitted by: Todd Hairgrove
Organization: Individual
Address:
Phone:
E-mail: toddhairgrove@yahoo.com
Submitted on: 3/18/2011

Comments: