

H.B. NO. 882

A BILL FOR AN ACT

RELATING TO IMPROVING PUBLIC HOUSING PROGRAM ADMINISTRATION.

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

1 SECTION 1. Section 356D-13, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+]~~ §356D-13 ~~[+]~~ Administration of federal programs. (a)

4 The authority may carry out federal programs designated to be
5 carried out by a public housing agency, or entity designated by
6 the authority.

7 (b) The authority shall adopt necessary rules in
8 accordance with chapter 91, including the establishment and
9 collection of reasonable fees for administering the program, to
10 carry out any federal program in subsection (a).

11 (c) The authority may also issue or adopt, without regard
12 to chapter 91, policies, regulations, standards, procedures, and
13 rental agreement terms in a manner prescribed by applicable law,
14 rule, regulation, memorandum, notice, contract, or other
15 instrument of the federal government where necessary or
16 appropriate to ensure orderly and efficient public housing
17 program administration.

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Report Title:

Hawaii Public Housing Authority; Administration of Federal Programs

Description:

Authorizes the Hawaii Public Housing Authority to adopt policies, regulations, standards, procedures, and rental agreements for its federal programs without regard to chapter 91, Hawaii Revised Statutes, where federal regulations provide for the manner of adoption required; and provides that in conflicts between state and federal regulations, federal regulations shall prevail.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Hawaii Public Housing Authority (Human Services)

TITLE: A BILL FOR AN ACT RELATING TO IMPROVING PUBLIC HOUSING PROGRAM ADMINISTRATION.

PURPOSE: To exempt the Hawaii Public Housing Authority (HPHA) from chapter 91, Hawaii Revised Statutes (HRS), in adopting certain policies and procedures where federal law provides an alternative process.

MEANS: Amend section 356D-13, HRS.

JUSTIFICATION: Section 356D-13, HRS, currently allows the HPHA to adopt administrative rules governing its federal programs. The HPHA's federal programs are additionally subject to extensive regulation by federal laws, rules, regulations, contracts, notices, memoranda, and other instruments issued by the United States Department of Housing and Urban Development (HUD). HUD regulations are applicable to all public housing agencies (PHAs) nationwide, and can require amendments to, adoption of, and repeal of any administrative policies and procedures of a PHA.

Of particular importance to the regulation of public housing and other federally assisted housing programs is the PHA 5-Year and Annual Plan (PHA Plan). The process described below for the adoption, amendment, or modification of this document, which is required to make significant amendments to the agency's Admissions and Continued Occupancy Policy (ACOP) more than adequately provides for the transparency and public involvement intended by the chapter 91 rule making process, and therefore, in such cases, the HPHA should be exempt from chapter 91.

The PHA Plan process was mandated on all PHAs over a certain size by the Quality Housing and Work Responsibility Act (QHWRA) of 1998, which significantly amended the Housing Act of 1937 (42 U.S.C. §1437c-1). HUD implemented the PHA Plan requirement at 24 C.F.R. part 903, and according to 24 C.F.R. §903.3(b), the purpose of the PHA Plan is to provide a framework for local accountability. It is also intended to provide an "easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services." (24 C.F.R. §903.3(b)(2)). HUD requires PHAs to submit a 5-Year Plan that covers the five PHA fiscal years immediately following its due date that addresses the PHA's mission, goals and objectives for the next 5 years and the progress the PHA has made in meeting the goals and objectives described in the PHA's previous 5-Year Plan. (24 C.F.R. §903.6(b)).

The PHA Annual Plan is an annual update of progress on the 5-Year Plan and any relevant information from the previously approved PHA Annual Plan. The Annual Plan must be submitted to HUD for approval on an annual basis and must include "the discretionary policies of the various plan components or elements (for example, rent policies) . . . The PHA's Annual Plan must be consistent with the goals and objectives of the PHA's 5-Year Plan." (24 C.F.R. §903.7).

Specifically, the PHA Plan must include, but is not limited to, statements regarding deconcentration and other eligibility, selection, and admissions policies; waiting list procedures; other admissions policies, such as those that govern eligibility, selection and admissions for the PHA's public housing (also known as the ACOP,

pursuant to 24 C.F.R. part 960) and tenant-based assistance programs (pursuant to 24 C.F.R. part 982); rent determination policies; operations and management; and anticipated capital improvement needs. (24 C.F.R. §903.7). If a PHA proposes to make substantial amendments or significant modifications to any of the enumerated policies in 24 C.F.R. §903.7, such changes must be developed and implemented through the PHA Plan process. The PHA Plan process requires intimate involvement of the Resident Advisory Board, which is tasked "to assist and make recommendations regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan." (24 C.F.R. §903.13(a)(1)). The PHA must also ensure that the PHA Annual Plan is consistent with other planning documents, such as the Consolidated Plan (24 C.F.R. §903.15) and must obtain public comment on 5-Year and the Annual Plan (24 C.F.R. §903.17).

In order to comply with the public comment requirement on the PHA Plan, the PHA must hold an open public meeting of the Board of Directors (24 C.F.R. §903.17(a)), make the proposed PHA Plan and all required documentation available for public inspection no less than 45 days prior to the hearing by published notice (24 C.F.R. §903.17(b)), and conduct reasonable outreach to encourage broad public participation (24 C.F.R. §903.17(c)). As stated, any "significant amendment or modification to a plan submitted to HUD is subject to the requirements of §§903.13, 903.15, and 903.17." (24 C.F.R. §903.21).

As is evident, therefore, the process imposed on all PHAs more than adequately protects the interests of the public, encourages open accountability, and resident and public involvement whenever the HPHA proposes to adopt, amend, or modify program rules and regulations in the ACOP. As such,

the HPHA should have the capacity to proceed with such actions exempt from chapter 91. Otherwise, under the current process, described below, the HPHA must follow a longer, more onerous process that adds at least 6 months to the timeline for adoption of necessary regulations.

Impact on the public: There should be a positive impact on the public as the HPHA will more quickly be able to conform program regulations to HUD mandated requirements and standards. Under current practice, such changes must go through the following process: PHA Plan (minimum 6 months); chapter 91 administrative rulemaking (approx. 6 months); ACOP amendment (approx. 3 months). This statutory addition would eliminate approximately 6 months of delay incurred by a duplicative rulemaking process required by chapter 91.

Impact on the department and other agencies:
None.

GENERAL FUNDS:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	HMS 229.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.