

JAN 24 2013

A BILL FOR AN ACT

RELATING TO PUBLIC HOUSING.

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

1 SECTION 1. Section 356D-92, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§356D-92 Termination and eviction.** (a) Except as
4 otherwise provided, the authority may terminate any lease,
5 rental agreement, permit, or license covering the use and
6 occupation of any dwelling unit or other premises located within
7 a public housing project and evict from any premises any tenant,
8 licensee, or other occupant for any of the following reasons:

- 9 (1) Failure to pay rent when due;
- 10 (2) Violation of any of the provisions of a lease, rental
11 agreement, permit, or license;
- 12 (3) Violation of any of the rules of the authority;
- 13 (4) Failure to maintain the dwelling unit in a clean,
14 sanitary, and habitable condition; or
- 15 (5) The existence of any other circumstances giving rise
16 to an immediate right to possession by the authority.
- 17 (b) When any tenant has been delinquent in payment of
18 rent, the authority, either directly or through its managing

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1 agent, shall provide the tenant with a written notice in
2 accordance with requirements imposed under federal law and
3 regulation (24 C.F.R. part 966) that shall inform the tenant of
4 the delinquency.

5 (c) Where law, rule, regulation, memorandum, notice,
6 contract or other instrument of the federal government allows
7 public housing agencies to terminate tenancy or evict tenants
8 from public housing without following administrative grievance
9 procedures, such terminations of tenancy and evictions shall be
10 governed by chapter 521."

11 SECTION 2. Section 521-7, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§521-7 Exclusions from application of chapter.** Unless
14 created solely to avoid the application of this chapter, this
15 chapter shall not apply to:

16 (1) Residence at an institution, whether public or
17 private, where residence is merely incidental to
18 detention or the provision of medical, geriatric,
19 educational, religious, or similar services;

20 (2) Residence in a structure directly controlled and
21 managed by:

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- 1 (A) The University of Hawaii or any other university
- 2 or college in the State for housing its own
- 3 students or faculty or residence in a structure
- 4 erected on land leased from the university or
- 5 college by a nonprofit corporation for the
- 6 exclusive purpose of housing students or faculty
- 7 of the college or university; or
- 8 (B) A private dorm management company that offers a
- 9 minimum of fifty beds to students of any college,
- 10 university, or other institution of higher
- 11 education in the State;
- 12 (3) Occupancy under a bona fide contract of sale of the
- 13 dwelling unit or the property of which it is a part
- 14 where the tenant is, or succeeds to the interest of,
- 15 the purchaser;
- 16 (4) Residence by a member of a fraternal organization in a
- 17 structure operated without profit for the benefit of
- 18 the organization;
- 19 (5) Transient occupancy on a day-to-day basis in a hotel
- 20 or motel;
- 21 (6) Occupancy by an employee of the owner or landlord
- 22 whose right to occupancy is conditional upon that

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- 1 employment or by a pensioner of the owner or landlord
2 or occupancy for a period of up to four years
3 subsequent thereto, pursuant to a plan for the
4 transfer of the dwelling unit or the property of which
5 it is a part to the occupant;
- 6 (7) A lease of improved residential land for a term of
7 fifteen years or more, measured from the date of the
8 commencement of the lease;
- 9 (8) Occupancy by the prospective purchaser after an
10 accepted offer to purchase and prior to the actual
11 transfer of the owner's rights;
- 12 (9) Occupancy in a homeless facility or any other program
13 for the homeless authorized under part XVII of chapter
14 346;
- 15 (10) Residence or occupancy in a public housing project or
16 complex directly controlled, owned, or managed by the
17 Hawaii public housing authority pursuant to the
18 federal low rent public housing program[+], except for
19 termination of tenancy or eviction actions as provided
20 in section 356D-92; or
- 21 (11) Residence or occupancy in a transitional facility for
22 abused family or household members."


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1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

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Report Title:

Hawaii Public Housing Authority; Termination and Eviction

Description:

Authorizes the Hawaii Public Housing Authority to process terminations of tenancy or evictions from the federal low-income public housing program without providing a grievance hearing where permitted under federal regulations.

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 PUBLIC HOUSING

PURPOSE: To exempt the Hawaii Public Housing Authority (HPHA) from providing a grievance hearing where federal law allows such an exemption.

MEANS: Amend sections 356D-92 and 521-7, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 356D-92, HRS, requires the HPHA to provide a grievance hearing in all eviction actions involving the agency's federal low-income public housing program. This is largely consistent with the United States Department of Housing and Urban Development (HUD) regulations (24 C.F.R. part 966), and provides for an open, equitable, consistent process for the prosecution of evictions in most cases. HUD regulations, however, also provide exceptions in limited circumstances where a public housing agency (PHA) may obtain a "due process determination" from HUD for certain crime related lease violations and thereafter eliminate the requirement of the grievance hearing, proceeding with the eviction directly.

As a general rule, under 24 C.F.R. section 966.51, PHA grievance procedures "shall be applicable (except as provided in . . . [24 C.F.R. §966.51] (a) (2) . . .) to all individual grievances as defined in §966.53 of this subpart between the tenant and the PHA." 24 C.F.R. §966.51(a) (1). 24 C.F.R. section 966.51(a) (2) provides as follows:

(i) The term *due process determination* means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in

court which provides the basic elements of due process (as defined in §966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:

- (A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;
- (B) Any violent or drug-related criminal activity on or off such premises; or
- (C) Any criminal activity that resulted in felony conviction of a household member.

. . . .

(iv) If HUD has issued a due process determination, the PHA may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure.

24 C.F.R. §966.51(a)(2).

HUD definitions indicate that the following will constitute "due process" as required for a due process determination:

(c) *Elements of due process* shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:

- (1) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;

- (2) Right of the tenant to be represented by counsel;
- (3) Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;
- (4) A decision on the merits.

24 C.F.R. §966.53(c).

Chapter 356D, part V, "Public Housing; Evictions" and chapter 521 (Residential Landlord-Tenant Code), part VI "Remedies and Penalties", provide that HPHA must process all grievance and eviction actions from the federal low-income public housing inventory through the agency's administrative processes, regardless of the type of lease violation involved. As a result, the eviction process is not as efficient as it could be.

This bill would amend two statutory sections to permit the agency to process evictions judicially when a HUD due process determination is obtained. This will allow the agency to more quickly remove dangerous criminal tenants from public housing.

Impact on the public: There should be a positive impact on the public as HPHA will more quickly be able to eliminate criminal activity in public housing projects.

Impact on the department and other agencies: The Department of the Attorney General is responsible for prosecuting evictions in state court, and could see a small increase in caseload.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM

DESIGNATION: HMS 220.

OTHER AFFECTED AGENCIES: Department of the Attorney General.

EFFECTIVE DATE: Upon approval.