



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Committee on Health

HB 2662, RELATING TO FOOD PREPARATION

**Testimony of Gary L. Gill
Acting Director of Health**

**February 7, 2014
8:45 a.m.**

1 **Department's Position:** The department respectfully opposes this bill.

2 **Fiscal Implications:** The department will be required to develop food safety education requirements
3 specifically for persons or agencies preparing and serving food for charitable purposes.

4 **Purpose and Justification:** Although this measure is well intended, passage of this bill will result in
5 placing the homeless or disenfranchised at undue risk for contracting possibly deadly or injurious
6 foodborne illnesses, as well as being placed at higher risk for consuming foods that may have been
7 exposed to potential contamination or adulteration.

8 Food safety and the etiology of foodborne illnesses do not distinguish between commercial and
9 charitable activities. Foodborne illness risk factors that are the direct causes of frequently deadly or
10 permanently debilitating injuries, as well as conditions that lead to food contamination or adulteration,
11 are not linked to whether the food is intended for a purely commercial venture or a charitable one.

12 Children that contract a food borne illness from an unregulated food supply may easily spread
13 the disease at school or other close quarters, thereby placing other children, citizens and tourists at
14 undue risk.

1 It is especially important to note that that those persons that are at the greatest risk of contracting
2 deadly or permanently debilitating foodborne illnesses are our Keiki, Kupuna, and those that are
3 immuno-compromised . The homeless and disenfranchised that rely on the charity of other people for
4 their food supply are frequently not in the best of health and are also at much greater risk of being
5 injured, or contracting a foodborne illness. The poor and disenfranchised that this measure purports to
6 help are also frequently housed in less than ideal or crowded conditions which further increases the risk
7 of an outbreak of disease.

8 Under the proposed new Hawaii Administrative Rules, Title 11, Chapter 50, the department has
9 removed the exemption for homeless feeding activities but have included measures to assist charitable
10 organizations to continue feeding the homeless but in a way that promotes and ensures food safety.
11 Some of the measures included in the new rule are:

- 12 • Under certain conditions, the waiver of food establishment permit fees for entities seeking to
13 feed the homeless
- 14 • DOH will provide free menu review consultation to determine the safety of the food being
15 served or proposed for distribution
- 16 • DOH will continue to provide free food safety education to food service facilities
- 17 • DOH will not allow any perishable or potentially hazardous foods (PHF) such as beef, pork,
18 chicken, seafood, dairy, etc., to be prepared in home kitchens but may allow limited preparation
19 in some churches, schools or other kitchens depending on the facilities (e.g. hand sinks, 3-
20 compartment sinks, etc.) available in the food preparation area.

21 Thank you for the opportunity to testify.

THE FOOD BASKET Inc.

Hawaii Island's Food Bank

www.thefoodbasketHI.org

February 6, 2014

To: House Committee on Health
Honorable Della Bellati, Chair

BOARD OF DIRECTORS

Fr: En Young, Executive Director
The Food Basket, Hawaii Island's Food Bank

Debra Ching-Maiava
Chairman of the Board

Testimony in Strong Support of HB 2662, Relating to Food Preparation

Brandee Menino
Vice Chair

Good Morning Chair Bellati and Committee Members,

My name is En Young and I am the Executive Director of The Food Basket, Inc., Hawai'i Island's Food Bank. Part of our mission is to "feed the hungry on Hawai'i Island." We strongly support this bill.

Karyl Franks
Treasurer

As you may know, Food Banks are not single agencies. Instead, we rely on the partnerships of many non-profits, including faith-based churches and schools, child-centered shelters and after-school programs, clean and sober houses, transitional and emergency shelters, and many other agencies and individuals wishing to help their fellow man. This bill attempts to preserve an exemption for all of these types of agencies who wish to serve the underserved. Food may not be the primary purpose for the agency, however it may still be an integral part of treatment, as clients may not be able to access food elsewhere. Thus, many of our agencies are not in the "business" of food yet find themselves unable to discard the food component of the service.

Ian Takashiba
Secretary

Haidee Abe
Director

We appreciate the Department of Health's (Department) testimony indicating they understand the bill is well-intentioned. Along the same lines, we applaud the Department in its efforts to modernize the food safety code and to offer consumers transparency regarding the food safety practices of commercial establishments. However, we believe the Department's efforts to move all agencies feeding people with hot meals to certified commercial kitchens comes from a fundamental misunderstanding of the realities of feeding the hungry and the challenges geographies pose. We believe the Department's reasoning should consider the following information:

Brandon Gonzales
Director

Roland Higashi
Director

Rhea Lee
Director

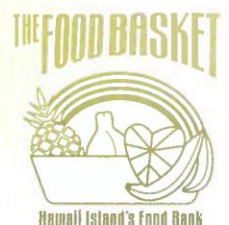
Margo Mau-Brumell
Director

Toby Taniguchi
Director

En Young
Executive Director

- *Fiscal Implications:*

The Department is concerned they would have to expend additional resources to develop curricula targeted to agencies preparing and serving food for charitable purposes. However, the Department also acknowledges that under the new rules they will "continue to provide free food safety



Hawaii Island's Food Bank

education to food service facilities." As the Department has stated, "Food safety and the etiology of food borne illnesses do not distinguish between commercial and charitable activities." Why then should the educational curricula for food safety and the causes food borne illness distinguish between food prepared for commercial purposes and food prepared for charitable purposes? We believe there will be no hardship on the Department other than potential additional classes.

- *Food Poisoning*

The Department contends that a child who eats food from an "unregulated" food supply may then spread that to other people, including children and tourists. Food poisoning is not necessarily a communicable disease to be spread through the air or close contact unlike the common cold or flu. In many cases you must actually eat the food to contract the food-borne illness. Secondly, the Department alleges that the food supply to agencies using the Food Bank systems are unregulated. Nothing could be further from the truth.

To be an Eligible Recipient Agency (ERA), Food Banks adhere to a federally-mandated set of food handling and transportation standards set under 7 CFR 250 and 251 for commodities. In addition, our partner retailers delivering perishable food must comply with Food and Drug Administration guidelines as well as their own corporate policies to even consider food fit for donation. After sorting, the Food Banks then store the food according to standards set by the Department of Health, and distribute food to agencies only as needed, discouraging stockpiling and constantly comparing the amount of food taken by agencies to their counts to ensure they are storing food for the least amount of time practicable. Although we are not licensed "inspectors," Food Bank personnel perform continuous monitoring and auditing of our partner agencies, including surprise meal inspections and inspections of storage facilities. The Food Banks, in partnership with the Department's Sanitation Branch, hold mandatory training for anyone wishing to become a partner agency on topics including food safety and food storage.

Although we understand the Department's reluctance to identify these practices as "regulation," we would also like to point out that the alternative is much more dangerous. Discontinuing meals for struggling individuals will drive them to seek out alternative sources of food, namely dumpsters and other discards unfit for human consumption. At The Food Basket and our partner agencies, we are forced to lock our dumpsters to prevent hungry people from accessing food unfit for consumption. Thus, it is actually the removal of soup kitchens serving hot meals that will contribute to "placing the homeless and disenfranchised at undue risk" for contracting food-borne illnesses.

- *The new rules will deter persons from serving only the homeless.*

Although well-intentioned, we do not believe the Department has considered the realities of non-profit work and the burden the installation of commercial certified kitchens.

The Department has offered a fee waiver for the permitting of temporary feeding establishments. This is admirable, however it is the immense investment and initial cost of installing a commercial kitchen that is particularly prohibitive. Much of Hawai'i County is not on a public water system. Water is trucked or pulled from a well. Not only must the kitchen equipment be installed, the water must be certified potable under the new rules as well. In the extreme case, The Food Basket serves a small charter school in the community of Miloli'i. Because of their close proximity to the ocean, the salinity of their well water is far beyond accepted standards for potable water. To even get to the point of providing a consistent supply of potable water for the kitchen the village would have to install desalination equipment and an upgraded filtration system. Miloli'i is 38 miles from Kailua-Kona and 95 miles from Hilo where this equipment can be obtained. Estimated costs of installation for this charter school run from \$150,000 to \$200,000. Commercial businesses establish a business model by which they can recoup their costs. Churches and individuals feeding the disadvantaged for no compensation will never recover this initial investment. With the high failure rate in the restaurant industry, it is difficult to imagine how many agencies will be able to sustain their operations without income.

For access to such a kitchen, especially for rural areas, such as nearly the entirety of Hawai'i County, the proximity to a commercial kitchen may easily be over 50 miles. The kitchen then has to be available at the time of the feeding. The community of Ocean View, for example, is 48 miles from Kailua-Kona and 72 miles from Hilo. With limited restaurants and very few schools in-between, the options for a commercial kitchen to prepare a hot meal are extremely low. If a hot meal is prepared, it then has to be held at the correct temperature for the duration of the drive back to the community where it would be served, necessitating additional equipment.

Attached please find a letter from the Department, dated January 2, 2014, that states: *"When the proposed rules are signed by the Governor, all food preparation will be required to be done in a facility with proper food safety equipment commensurate with the extent of their menu. Peanut Butter sandwiches will require a hand-wash sink and a clean-up sink. If you are a full service operation (e.g. making beef stew from scratch), you will need commercial hoods for the stove, proper freezers, and or refrigeration, hot holding units, 3 compartment sinks or commercial dishwashers and multiple hand sinks in food prep and ware-washing areas, etc.."*

This is disturbing in the amount of equipment necessary to simply prepare beef stew, but more so because the Department is basically asking us and our partner agencies to limit the variety of foods we serve our disadvantaged to comply with the rules. As an advocacy agency for those lower on the socio-economic scale, we believe none of us should be relegated to peanut butter sandwiches on a daily basis while there exist the means and the supply to offer our friends and neighbors a choice. Hot meals offer comfort and hope as well as sustenance. Most disheartening is the opening statement of the first sentence in the paragraph quoted above. This serves as a signal that our testimony during the public hearing process went unconsidered

and no additional research or discussion would be had with the agencies this affects most.

One of the greatest misconceptions about Food Banks is that our target population is the homeless. In all honesty, many of our soup kitchens may have been using the homeless exemption to serve, or not verifying homelessness. In reality, the majority of the people we serve are not homeless. This is immediately evident if you compare the number of discrete trips to our soup kitchens with the annual point-in-time (PIT) count. Many are Seniors on fixed incomes, children that show up to the meals by themselves because their one parent is working, large working families that cannot afford food, and other community members that may be having a hard time that week. This exemption allows Food Banks to not have to differentiate between homeless persons and non-homeless persons in need when providing services.

- *Adequate public testimony was provided*

Although we do not contend that the Department failed to follow procedures governing the promulgation of rules, we also do not believe our agencies are aware of ramifications of changing a few simple sentences. Most Departments prepare a "Comparison Sheet" or "C-Sheet" to explain the differences between previous and current forms of Legislation or Statute. With such a vast expansion of the rules, we feel it would have been much more transparent for the public to have access to such a comparison document to accurately understand and provide testimony on the rule expansion to 172 pages.

Furthermore, although this bill focuses on one particular exemption, the proposed rules remove seven (7) other exemptions, including those for day-care providers and homes that receive catered food, and add a new exemption.

- *Commercial Certified Kitchens will prevent food-borne disease*

Finally, an additional assertion was made by the Department in its January 2nd letter that food safety "can only be assured through the DOH's regulations." We believe this to be patently false. Hundreds of thousands of homes statewide prepare meals on a daily basis without DOH intervention. Furthermore, there is absolutely no causal relationship between commercial kitchen equipment, the certification level of an establishment, and food borne illnesses. However, there is a direct causal relationship between the food handling and safety protocols of individuals coming in contact with food and food borne illnesses. Preparing chicken, beef, fish, or pork in the presence of three hand washing sinks filled with chlorine, overhead ventilation hoods, and commercial dishwashers will not, by any means, guarantee the safety of the food. By contrast, a hunter can clean, dress, and consume an animal hundreds of miles away from civilization and surrounded by forest if he or she follows proper food safety procedures. To illustrate the point, the most recent heavily publicized case of food poisoning was food prepared in a certified facility.

We ask your committee to pass this bill and focus instead on the education of individuals trying to do good deeds, rather than the equipment and tools they use. Thank you for the opportunity to testify.



STATE OF HAWAII
DEPARTMENT OF HEALTH
SANITATION BRANCH
591 Ala Moana Boulevard
Honolulu, Hawaii 96813-4921

In reply, please refer to
File:

January 2, 2014

Roxanne Stark
Hawaii Food Bank
2611 Kilihau St
Honolulu, HI 96819

SUBJECT: Proposed Hawaii Administrative Rules (HAR) Title 11, Chapter 50,
Food Safety Code.

Aloha Roxanne,

Pursuant to our conversation this morning I am following up with this memo.

As you may know, in 2007, the Lingle Administration pushed through an emergency rule that exempted all DOH food safety regulations designed to protect public health, from those individuals or organizations that feed only the homeless. This was done even though there were extreme objections by the program whose mission is to protect public health through enforcement of health regulations. The Sanitation Branch argued that the exemption would be placing all residents and visitors of Hawaii at undue risk for contracting communicable diseases.

As the homeless are also members of our community, they must also be protected from potentially deadly food and water borne illnesses through food safety practices that can only be assured through the DOH's regulations governing food establishments that include review of the building plans, menus, food operations and preparation, permitting and inspections. Many of the homeless are already at much higher risk for contracting diseases that the rest of the population due to poor health, nutrition and other factors that may weaken their immune system. If the DOH does not regulate the preparing of food for the homeless, statewide epidemics may result as those homeless that may be infected may also harbor and spread these foodborne diseases to others in the community. An infected homeless child who attends public schools may also infect all others at the school with a communicable disease that was contracted as a result of an unregulated food supply.

That being said, the proposed HAR will remove the homeless feeding exemption from the existing rule. Individuals or organizations that are distributing food at present without DOH Food Establishment permits will be asked to submit applications to the

DOH, and must comply with food safety regulations, and be able to obtain permits. We are planning to waive the plan review and permit fees for those that feed ONLY the homeless without compensation, consideration, or donation of any kind.

When the proposed rules are signed by the Governor, all food preparation will be required to be done in a facility with proper food safety equipment commensurate with the extent of their menu. Peanut Butter sandwiches will require a hand-wash sink and a clean-up sink. If you are a full service operation (e.g. making beef stew from scratch), you will need commercial hoods for the stove, proper freezers, and or refrigeration, hot holding units, 3 compartment sinks or commercial dishwashers and multiple hand sinks in food prep and ware-washing areas, etc..

The proposed rule will allow home kitchens to be used only for non-potentially hazardous foods such as dry, baked goods through a temporary food establishment permit that allows food to be distributed no more than 20 days in any 120 day window at a specific site.

The proposed rule is on our web-site at www.health.hawaii.gov/san/

Please contact me if you have any questions,

Peter Oshiro
Environmental Health Program Manager
Sanitation Branch

HB2662

Submitted on: 2/5/2014

Testimony for HLT on Feb 7, 2014 08:45AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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