# SB 2393

**RELATING TO COUNTY ZONING FOR GROUP LIVING FACILITIES**

**Authorizes counties to require group living facilities to meet zoning requirements regarding geographic separation. Defines geographic separation as a distance specified by county ordinance.**

**PSM/HMS**

NEIL ABERCROMBIE
GOVERNOR

STATE OF HAWAII
**DEPARTMENT OF PUBLIC SAFETY**
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

TED SAKAI
DIRECTOR

**Martha Torney**
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Deputy Director
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**Shawn Tsuha**
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL (SB) 2393
A BILL RELATING TO
COUNTY ZONING FOR GROUP LIVING FACILITIES
by
Ted Sakai, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental and Military Affairs
Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair

Senate Committee on Human Services
Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair

Tuesday, February 25, 2014, 3:00 p.m.
State Capitol, Conference Room 224

Chairs Espero and Chun Oakland, Vice Chairs Baker and Green, and Members of the Committee:

The Department of Public Safety (PSD) **opposes** SB 2393.

The apparent intent of this legislation is to relieve certain communities of the problems associated with group living facilities, such as traffic congestion, noise, and commercial deliveries. While the Department recognizes that these issues affect the quality of life for the residents of the affected community, we are concerned that this legislation will have an adverse effect on offenders who are trying to reintegrate back into the community.

Group living facilities which provide accommodations for a wide range of residents including offenders, the developmentally disabled, and the mentally ill must comply with already existing county zoning codes. We are concerned that further restrictions will increase the difficulty of operating such homes thereby reducing the already limited supply of such homes. Offenders ready for re-entry back into the community already faced daunting hurdles to successful re-entry. Limiting their housing options reduces their chances of successful reentry.

We note that SB 2587, Relating to Group Homes, proposes to create a registry of clean and sober homes which will provide more oversite and an avenue for dealing with complaints from the community. Please consider tabling this bill and allowing SB 2587 to move forward.

Thank you for the opportunity to testify on this bill.

# DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129


February 25, 2014

TESTIMONY TO THE SENATE COMMITTEES ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS AND HUMAN SERVICES

Senate Bill 2393 - Relating to County Zoning for Group Living Facilities

The Disability and Communication Access Board (DCAB) provides technical assistance to the public regarding the Federal Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA). Both the FHA and the ADA prohibit discrimination against individuals with disabilities by service providers in the community.

DCAB opposes SB 2393 authorizing counties to require group living facilities to meet zoning requirements regarding geographic separation. The bill defines geographic separation between group living facilities as a distance specified by county ordinance. We believe that this provision would be a violation of the FHA. Furthermore, this would limit the number of homes within a community for individuals with disabilities, intellectual or developmental disabilities and the elderly. These homes are established to assist people to transition into independence and community living. To limit the number of homes within a neighborhood would discriminate against a specific population of individuals.

We need to address community concerns in a manner that is consistent with federal law which does not discriminate against individuals with disabilities.

Thank you for the opportunity to testify.

Respectfully submitted,

BARBARA FISCHLOWITZ-LEONG
Chairperson
Legislative Committee

FRANCINE WAI
Executive Director

# HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692


February 25, 2014
3:00 p.m.
Conference Room 224

To: The Honorable Will Espero, Chair
and Members of the Senate Committee on Public Safety,
Intergovernmental and Military Affairs

The Honorable Suzanne Chun Oakland, Chair
and Members of the Senate Committee on Human Services

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai'i Civil Rights Commission

Re: S.B. No. 2393

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

Senate Bill No. 2393 authorizes counties to set geographic separation requirements for group living facilities that house individuals with disabilities. The HCRC opposes this bill because it violates both the federal Fair Housing Act (FHA) and HRS Chapter 515, Hawai'i's fair housing law.

Both the FHA and HRS Chapter 515 prohibit discrimination based on disability. The U.S. Department of Justice (DOJ) and the U.S. Department of Housing and Urban Development (HUD) have determined that the FHA applies to state and local zoning laws, and that density restrictions for group homes violate the FHA. This is because such ordinances prohibit homes for people with disabilities from locating in a particular area, while allowing other groups of unrelated people to live in that area. See attached "Joint Statement of the DOJ and HUD: Group Homes, Local Land Use, and the Fair Housing Act." This position has been affirmed by several federal courts. See Larkin v. State of Michigan Dep't of Soc. Servs., 89 F.3d 295 (6th Cir. 1996), Oconomowoc Residential Programs v. City of Milwaukee, 300 F.3d 775 (7th Cir. 2002). In addition, HRS § 515-17 states that "[a]ny attempt to commit, directly or indirectly, a discriminatory practice is a discriminatory practice."

For these reasons, the HCRC encourages your committees to hold this bill.

**JOINT STATEMENT OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT**

Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great deal of litigation concerning the Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability.[1] The Act does not pre-empt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.
The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.
- What constitutes a reasonable accommodation is a case-by-case determination.
- Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

The disability discrimination provisions of the Fair Housing Act do <u>not</u> extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have

been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.
HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable dispute resolution procedures, like mediation, as alternatives to litigation.
DATE: AUGUST 18, 1999

**Questions and Answers on the Fair Housing Act and Zoning**

**Q. Does the Fair Housing Act pre-empt local zoning laws?**
No. "Pre-emption" is a legal term meaning that one level of government has taken over a field and left no room for government at any other level to pass laws or exercise authority in that area. The Fair Housing Act is not a land use or zoning statute; it does not pre-empt local land use and zoning laws. This is an area where state law typically gives local governments primary power. However, if that power is exercised in a specific instance in a way that is inconsistent with a federal law such as the Fair Housing Act, the federal law will control. Long before the 1988 amendments, the courts had held that the Fair Housing Act prohibited local governments from exercising their land use and zoning powers in a discriminatory way.

**Q. What is a group home within the meaning of the Fair Housing Act?**
The term "group home" does not have a specific legal meaning. In this statement, the term "group home" refers to housing occupied by groups of unrelated individuals with disabilities.(2) Sometimes, but not always, housing is provided by organizations that also offer various services for individuals with disabilities living in the group homes. Sometimes it is this group home operator, rather than the individuals who live in the home, that interacts with local government in seeking permits and making requests for reasonable accommodations on behalf of those individuals.
The term "group home" is also sometimes applied to any group of unrelated persons who live together in a dwelling -- such as a group of students who voluntarily agree to share the rent on a house. The Act does not generally affect the ability of local governments to regulate housing of this kind, as long as they do not discriminate against the residents on the basis of race, color, national origin, religion, sex, handicap (disability) or familial status (families with minor children).

**Q. Who are persons with disabilities within the meaning of the Fair Housing Act?**
The Fair Housing Act prohibits discrimination on the basis of handicap. "Handicap" has the same legal meaning as the term "disability" which is used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment.

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.
The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

**Q. What kinds of local zoning and land use laws relating to group homes violate the Fair Housing Act?**
Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.
A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

**Q. What is a reasonable accommodation under the Fair Housing Act?**
As a general rule, the Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling.
Even though a zoning ordinance imposes on group homes the same restrictions it imposes on other groups of unrelated people, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. For example, it may be a reasonable accommodation to waive a setback requirement so that a paved path of travel can be provided to residents who have mobility impairments. A similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling.

Not all requested modifications of rules or policies are reasonable. Whether a particular accommodation is reasonable depends on the facts, and must be decided on a case-by-case basis. The determination of what is reasonable depends on the answers to two questions: First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental alteration in the zoning scheme? If the answer to either question is "yes," the requested accommodation is unreasonable.

What is "reasonable" in one circumstance may not be "reasonable" in another. For example, suppose a local government does not allow groups of four or more unrelated people to live together in a single-family neighborhood. A group home for four adults with mental retardation would very likely be able to show that it will have no more impact on parking, traffic, noise, utility use, and other typical concerns of zoning than an "ordinary family." In this circumstance, there would be no undue burden or expense for the local government nor would the single-family character of the neighborhood be fundamentally altered. Granting an exception or waiver to the group home in this circumstance does not invalidate the ordinance. The local government would still be able to keep groups of unrelated persons without disabilities from living in single-family neighborhoods.

By contrast, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons having nothing to do with the disabilities of its residents. Such a facility might or might not impose significant burdens and expense on the community, but it would likely create a fundamental change in the single-family character of the neighborhood. On the other hand, a nursing home might not create a "fundamental change" in a neighborhood zoned for multi-family housing. The scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors that will be taken into account in determining whether a requested accommodation is reasonable.

**Q. What is the procedure for requesting a reasonable accommodation?**

Where a local zoning scheme specifies procedures for seeking a departure from the general rule, courts have decided, and the Department of Justice and HUD agree, that these procedures must ordinarily be followed. If no procedure is specified, persons with disabilities may, nevertheless, request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria discussed above. A local government's failure to respond to a request for reasonable accommodation or an inordinate delay in responding could also violate the Act.

Whether a procedure for requesting accommodations is provided or not, if local government officials have previously made statements or otherwise indicated that an application would not receive fair consideration, or if the procedure itself is discriminatory, then individuals with disabilities living in a group home (and/or its operator) might be able to go directly into court to request an order for an accommodation.

Local governments are encouraged to provide mechanisms for requesting reasonable accommodations that operate promptly and efficiently, without imposing significant costs or delays. The local government should also make efforts to insure that the availability of such mechanisms is well known within the community.

**Q. When, if ever, can a local government limit the number of group homes that can locate in a certain area?**

A concern expressed by some local government officials and neighborhood residents is that certain jurisdictions, governments, or particular neighborhoods within a jurisdiction, may come to have more than their "fair share" of group homes. There are legal ways to address this concern. The Fair Housing Act does not prohibit most governmental programs designed to encourage people of a particular race to move to neighborhoods occupied predominantly by people of another race. A local government that believes a particular area within its boundaries has its "fair share" of group homes, could offer incentives to providers to locate future homes in other neighborhoods.

However, some state and local governments have tried to address this concern by enacting laws requiring that group homes be at a certain minimum distance from one another. The Department of Justice and HUD take the position, and most courts that have addressed the issue agree, that density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community. Especially in the licensing and regulatory process, it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods.

**Q. What kinds of health and safety regulations can be imposed upon group homes?**

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate. Neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency. We encourage the states to commit the resources needed to make these systems responsive to resident and community needs and concerns.

Regulation and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such requirements based on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives behind attempts to exclude group homes from a community. Regulators must also recognize that not all individuals with disabilities living in group home settings desire or need the same level of services or protection. For example, it may be appropriate to require heightened fire safety measures in a group home for people who are unable to move about without assistance. But for another group of persons with disabilities who do not desire or need such assistance, it would not be appropriate to require fire safety measures beyond those normally imposed on the size and type of residential building involved.

**Q. Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group home to locate in a residential neighborhood?**
In the same way a local government would break the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.
Of course, a city council or zoning board is not bound by everything that is said by every person who speaks out at a public hearing. It is the record as a whole that will be determinative. If the record shows that there were valid reasons for denying an application that were not related to the disability of the prospective residents, the courts will give little weight to isolated discriminatory statements. If, however, the purportedly legitimate reasons advanced to support the action are not objectively valid, the courts are likely to treat them as pretextual, and to find that there has been discrimination.
For example, neighbors and local government officials may be legitimately concerned that a group home for adults in certain circumstances may create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors or officials to raise this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of individuals with disabilities or a group home operator shows by credible and unrebutted evidence that the home will not create a need for more parking spaces, or submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to deny the home a permit.

**Q. What is the status of group living arrangements for children under the Fair Housing Act?**
In the course of litigation addressing group homes for persons with disabilities, the issue has arisen whether the Fair Housing Act also provides protections for group living arrangements for children. Such living arrangements are covered by the Fair Housing Act's provisions prohibiting discrimination against families with children. For example, a local government may not enforce a zoning ordinance which treats group living arrangements for children less favorably than it treats a similar group living arrangement for unrelated adults. Thus, an ordinance that defined a group of up to six unrelated adult persons as a family, but specifically disallowed a group living arrangement for six or fewer children, would, on its face, discriminate on the basis of familial status. Likewise, a local government might violate the Act if it denied a permit to such a home because neighbors did not want to have a group facility for children next to them.
The law generally recognizes that children require adult supervision. Imposing a reasonable requirement for adequate supervision in group living facilities for children would not violate the familial status provisions of the Fair Housing Act.

**Q. How are zoning and land use matters handled by HUD and the Department of Justice?**

The Fair Housing Act gives the Department of Housing and Urban Development the power to receive and investigate complaints of discrimination, including complaints that a local government has discriminated in exercising its land use and zoning powers. HUD is also obligated by statute to attempt to conciliate the complaints that it receives, even before it completes an investigation.

In matters involving zoning and land use, HUD does not issue a charge of discrimination. Instead, HUD refers matters it believes may be meritorious to the Department of Justice which, in its discretion, may decide to bring suit against the respondent in such a case. The Department of Justice may also bring suit in a case that has not been the subject of a HUD complaint by exercising its power to initiate litigation alleging a "pattern or practice" of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

The Department of Justice's principal objective in a suit of this kind is to remove significant barriers to the housing opportunities available for persons with disabilities. The Department ordinarily will not participate in litigation to challenge discriminatory ordinances which are not being enforced, unless there is evidence that the mere existence of the provisions are preventing or discouraging the development of needed housing.

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to take enforcement action in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or Department of Justice decision not to proceed with a zoning or land use matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

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1. The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.
2. There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangements "group homes," and it is inappropriate to consider them "group homes" as that concept is discussed in this statement.

HAWAII SUBSTANCE ABUSE COALITION

# SB2393 County Zoning for Group Living: Geographic Separation

- COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS: Senator Espero, Chair; Senator Baker, Vice Chair
- COMMITTEE ON HUMAN SERVICES: Senator Chun Oakland, Chair; Senator Green M.D., Vice Chair
- Tuesday, Feb., 2014; 3:00 p.m.
- Conference Room 224

## HAWAII SUBSTANCE ABUSE COALITION Opposes SB2393

*Good Morning Chair Espero, Chair Chun Oakland, Vice Chair Baker, Vice Chair Green and Distinguished Committee Members. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization of more than twenty non-profit treatment and prevention agencies.*

## For the last 2 years, a multi-department task force has meet to determine appropriate legislation to address effective use of the complex federal and state laws pertaining to clean and sober housing:

There are complex Fair Housing Act and ADA laws to protect individuals with disabilities such as alcoholics as well as individuals who are currently drug free and are involved in continuing professional rehabilitation and mentoring programs. Federal precedence has created increasingly protective measures to safeguard equal access to housing for people with disabilities, including changes in rules, and policies or procedures to access housing or housing-related services.

**SB2393 violates Federal laws and exposes the State to litigation**

## The task force is proposing legislation for clean and sober housing this session that does not violate federal law and yet establishes criteria to monitor performance:

1. Laws and definitions are changed to comply with federal laws thus clearly defining and ensuring federal protections are specifically applied only to housing that is subject to ADA and Federal Housing Act regulations.
2. The Department of Health will establish a registry that will:
    a. Help clean and sober housing facilities obtain proper county permits and meet all zoning requirements.
    b. Train registered clean and sober operators on policies and procedures for good management, including good neighbor practices.

c. Respond and enforce compliance for registered houses.
d. Provide a list to referring agencies that they refer to registered homes.

The task force included:

| | | |
|---|---|---|
| Sen. Espero, Sen. Tokuda | Deputy Attorney General | Substance Abuse Treatment |
| Rep. Carroll, Rep. Jordan | Department of Health | Clean and Sober Houses |
| Other Sen. and Rep. | County Planning and | Homeless agencies |
| leadership offices. | Zoning from every County | |
| | Public Safety and Parole | Halfway House agency |
| | Adult Client Services | Community |

The task force recognizes that there are complex federal and state laws that support clean and sober housing arrangements because they are a cost effective and valuable means to transition recovering individuals back into their chosen communities; however, quality and compliance would improve if government could establish and monitor performance criteria. New legislation is being proposed this session that we believe would accomplish this objective.

**We appreciate the opportunity to provide testimony and are available for questions.**

**HAWAII DISABILITY RIGHTS CENTER**

**1132 Bishop Street, Suite 2102, Honolulu, Hawaii 96813**
*Phone/TTY*: **(808) 949-2922** *Toll Free*: **1-800-882-1057** *Fax*: **(808) 949-2928**
*E-mail*: **info@hawaiidisabilityrights.org** *Website*: **www.hawaiidisabilityrights.org**

**THE SENATE**
**THE TWENTY-SEVENTH LEGISLATURE**
**REGULAR SESSION OF 2014**

**Committee on Public Safety, Intergovernmental and Military Affairs**
**Committee on Human Services**
**Testimony in Opposition To S.B. 2393**
**Relating to County Zoning for Group Living Facilities**

**Tuesday, February 25, 2014, 3:00 P.M.**
**Conference Room 224**

Chair Espero, Chair Chun-Oakland, and Members of the Committees:

The Hawaii Disability Rights Center testifies in opposition to this bill. While we understand that communities may have some concerns about certain group homes, the provision in this bill which allows for the imposition of a geographic separation between such homes violates the Federal Fair Housing Act in our opinion. That is because the federal law precludes the imposition of conditions upon individuals with disabilities that would not otherwise be applicable to all individuals at large. Here it is obvious that only such homes are subject to this requirement, while other residential homes are not. This appears on its face to be a clear violation.

In addition to the illegality of the measure, we think it is not appropriate as a matter of policy. The United States Supreme Court in the Olmstead decision declared the right of individuals with disabilities to live in the most integrated setting in the community. If that Court ruling is to be realized, then it is vital that the community develop sufficient capacity to house and care for these individuals with disabilities. Placing an onerous, arbitrary restriction upon homes for these individuals is clearly counter to the goal of integrating them into the community.

Thank you for the opportunity to testify in opposition to this measure.

# ʻĀINA HAINA COMMUNITY ASSOCIATION

c/o ʻĀina Haina Library, 5246 Kalanianaole Highway, Honolulu, HI 96821
ainahainaassoc@gmail.com; www. ainahaina.org

Jeanne Ohta, President • Anson Rego, Vice-President • Art Mori, Treasurer • Kathy Takemoto, Secretary • Directors At Large: Wayson Chow, Devon James, Melia Lane-Kanahele, Gregg Kashiwa


February 25, 2014

To: Senator Will Espero, Chair
Senator Rosalyn Baker, Vice Chair and
Members of the Committee on Public Safety, Intergovernmental and Military Affairs

To: Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair and
Members of the Committee on Human Services

From: Jeanne Y. Ohta, President
ʻĀina Haina Community Association

RE: SB 2393 Relating to County Zoning for Group Living Facilities
Hearing: Tuesday, February 25, 2014, 3:00 p.m., Room 224

Position: Support Intent

The Board of Directors of the ʻĀina Haina Community Association write in support of the intent of SB 2393 Relating to County Zoning for Group Living Facilities.

Residents of our community have expressed concern over the number of facilities that are located within the same block, creating commercialized areas in residential neighborhoods. They have also expressed concern over locating facilities on small narrow streets or short dead-end streets making it difficult for ambulances to turn around; and over group facilities which have little or no on-site parking.

Other resident concerns which are not addressed under the current procedures are:

- location of facility in a tsunami evacuation zone
- high traffic streets
- parking density on streets
- commercial vehicle traffic
- removal of waste material
- 24/7 visitor traffic

The impacts on the neighborhood, traffic, parking, noise and safety should be taken into consideration when locations for group living facilities are chosen. Thank you for the opportunity to provide testimony on this measure.

**From:** mailinglist@capitol.hawaii.gov
**Sent:** Monday, February 24, 2014 1:41 PM
**To:** PSMTestimony
**Cc:** teresa.parsons@hawaii.edu
**Subject:** Submitted testimony for SB2393 on Feb 25, 2014 15:00PM

**SB2393**
Submitted on: 2/24/2014
Testimony for PSM/HMS on Feb 25, 2014 15:00PM in Conference Room 224

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Teresa Parsons | Individual | Support | No |

Comments: Honorable Chair Espero, Chair Chun-Oaklund,and esteemed members of this joint committee, mahalo for allowing me to testify in support of this measure. I do believe integration of group homes is in harmony with the spirit of ohana and aloha, but agree strongly there must be an adherence to GEOGRAPHIC separation of group homes to ensure the richness of community living and the presence of "neighborly" behaviors. Too many group homes in one location creates a hardship on single family homes and creates tension between neighbors regarding noise, traffic, and activity. I urge you to support this measure and send it forward for a vote with the full Legislature. Mahalo for allowing me to submit testimony in SUPPORT of SB2393.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov