



## TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-SEVENTH LEGISLATURE, 2014

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**ON THE FOLLOWING MEASURE:**

**S.B. NO. 2393, RELATING TO COUNTY ZONING FOR GROUP LIVING FACILITIES.**

**BEFORE THE:**

**SENATE COMMITTEES ON PUBLIC SAFETY, INTERGOVERNMENTAL AND  
MILITARY AFFAIRS AND ON HUMAN SERVICES**

**DATE:** Tuesday, February 25, 2014 **TIME:** 3:00 p.m.

**LOCATION:** State Capitol, Room 224

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Andrea J. Armitage, Deputy Attorney General

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Chairs Espero and Chun Oakland and Members of the Committees:

The Attorney General opposes this bill because it violates federal law.

This bill amends section 46-4(d), Hawaii Revised Statutes (HRS), by adding geographic separation to the list of county requirements with which state-licensed group living facilities that have eight or fewer residents must comply. "Geographic separation" is defined as "the minimum distance required between any group living facilities specified by county ordinance." Page 4, lines 1-3.

Section 46-4(d) currently provides that state-licensed group homes of up to eight residents may not be prohibited by law, county ordinance, or rule, as long as they meet certain requirements. These small group living facilities are community homes for persons with developmental disabilities, intellectual disabilities, other disabilities, or mental illness, and for the elderly. This population is protected from discrimination in housing by the federal Fair Housing Amendments Act of 1988 (FHAA), codified in 42 U.S.C. sections 3601 to 3631. Generally, the FHAA prohibits discrimination against persons with any "handicap" (now referred to as a disability). This term is defined very broadly to mean any person who has "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment . . . ." 42 U.S.C. § 3602(h). The FHAA's purposes include ending segregation of the housing available to people with disabilities and giving people with disabilities the right to choose where they wish to live.

Section 46-4(d) further provides, however, that these small state-licensed group living facilities must comply with “all applicable county requirements not inconsistent with the intent of this subsection and including building height, setback, maximum lot coverage, parking, and floor area requirements.” These five requirements are no different than those imposed on all family dwellings. The statute merely makes it clear that the small state-licensed group homes must also comply with the county ordinances on these issues, but this bill adds to the requirements “geographic separation.”

As long as the geographical separation requirement is applied to all family homes, th bill would not violate the FHAA. However, as defined in this bill on page 4, lines 1-3, “geographic separation” requirements do not apply for all family homes; rather, they would apply only to these small licensed group homes. If the counties were to enact such ordinances, those ordinances would violate the FHAA. The State could also be exposed to liability, because enacting this bill could be interpreted to provide state approval for geographic separation amendments to county zoning ordinances.

We respectfully recommend that this bill be held.

# LATE TESTIMONY

**From:** Shannon Wood [mailto:info@waa-hawaii.org]  
**Sent:** Tuesday, February 25, 2014 11:39 AM  
**To:** PSMTestimony  
**Subject:** SB 2393 - RELATING TO COUNTY ZONING FOR GROUP LIVING FACILITIES

Submitted by

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## COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

*Senator Will Espero, Chair*  
*Senator Roselyn Baker, Vice Chair*

## COMMITTEE ON HUMAN SERVICES

*Senator Suzanne Chun Oakland, Chair*  
*Senator Josh Green, Vice Chair*

3 pm

Tuesday, February 25, 2014  
Conference Room 224

### SB 2393 - RELATING TO COUNTY ZONING FOR GROUP LIVING FACILITIES

#### **Strongly Oppose**

I am Shannon Wood, the co-founder and president of the *Windward Ahupua`a Alliance*, a 501(c)3 Hawai`i non-profit corporation which was established in July, 2002, to create the **Ko`olau Greenbelt & Heritage Trails System** to restore, protect & provide public access to the *mauka* lands on the Windward side of O`ahu along the base of *Nā Ko`olau* as well as to support locally-owned sustainable economic activities in the more developed areas. Its mandate, however, has greatly expanded over the past eleven-plus years well beyond these important regional issues.

*WAA* also advocates on matters as diverse as to how & where we will live, work & play including public education, transit-oriented development, and special-needs housing. I first became involved with group housing issues back in early 1999 after battling - successfully - against certain people who live in Kailua, O`ahu, who objected to establishing a group home for pregnant women. Over the past 15 years, I've joined hundreds of others in Kailua to establish housing for mentally-retarded adults, people dealing with drug and alcohol addictions, domestic violence victims, and women leaving the *Women's Community Correctional Center*.

Late last summer, a proposed group home in **Keolu Hills** was opposed by some of the members of the *Kailua Neighborhood Board* plus a group of their supporters because the size of the property was the same size as the properties surrounding it. The opponents tried to get the application turned down, but their request

was denied because the *City & County*'s administrative rules do not require special needs housing properties be significantly larger than surrounding properties.

I strongly oppose this bill which would require all four counties to add "geographic separation" in approving group living facilities.

*Mahalo* for the (late) opportunity to testify in opposition to this bill.