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Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON JUDICIARY

February 24, 2015 2:00 P.M.
Room 325, Hawaii State Capitol

In consideration of

House Bill 767, H.D. 1

Relating to the Hawaii Public Housing Authority

Honorable Chair Rhoads and Members of the House Committee on Judiciary, thank you for this opportunity to provide comments regarding House Bill (H.B.) 767, House Draft (H.D.) 1, relating to the Hawaii Public Housing Authority.

The Hawaii Public Housing Authority (HPHA) strongly supports with amendments this measure to clarify trespassing in the second degree at HPHA housing projects. We believe that this measure is necessary for the safety and well-being of our residents who have the right to peacefully enjoy their homes without fear of unauthorized intruders at all hours of the day.

The HPHA continues to work with the Department of the Attorney General to craft language that effectuates the purpose of the bill while carefully considering potential constitutional and enforcement issues. The HPHA therefore provides a proposed H.B. 767, H.D. 2 (see attached), for your consideration.

The proposed H.D. 2 does the following:

1. Closes all HPHA housing projects to the public and requires signage indicating that the property is closed. "Public" does not include tenants; household members; guests of tenants; HPHA directors, officers, employees, agents, representatives or contractors; HUD employees, agents or contractors; persons carrying out governmental duties; persons participating in a HPHA authorized program; and persons engaging in constitutionally protected door-to-door communications and pamphleteering between 9am and 8pm.

2. Expands criminal trespass in the second degree to include non-tenants who are members of the public who enter or remain without authorization. "Authorization" means permission given to a non-tenant to enter the subject housing project, which is given either by a tenant of the subject housing project, or housing authority.

The HPHA appreciates the opportunity to provide the House Committee on Judiciary with the agency's position regarding H.B. 767, H.D. 1. We respectfully request the Committee to **pass the proposed H.B. 767, H.D. 2**, and we thank you very much for your dedicated support.

Proposed H.B. NO. 767, H.D. 2

A BILL FOR AN ACT

RELATING TO HAWAII PUBLIC HOUSING AUTHORITY PROJECTS.

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

1 SECTION 1. Chapter 356D, Hawaii Revised Statutes, is
2 amended by adding to part I a new section to be appropriately
3 designated and to read as follows:

4 "§356D- Closed to the Public. (a) Any area within a
5 housing project that is not a public street, road, highway,
6 sidewalk, or county or state bus stop, is closed to the public
7 where signs are displayed that read: "Closed to the Public - No
8 Trespassing", or a substantially similar message; provided that
9 the signs shall contain letters not less than two inches in
10 height and be placed at reasonable intervals along the boundary
11 line of the areas that are closed to the public in a manner and
12 position as to be clearly noticeable from outside the boundary
13 line.

14 (b) For the purposes of this section:

15 "Housing project" means a public housing project or elder
16 or elderly housing, as defined in section 356D-1, or state low-
17 income housing project, as defined in section 356D-51.

18 "Public" does not include the following persons:

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1 (1) A tenant as defined in section 356D-1 or section
2 356D-51 who leases a unit in the subject housing
3 project;

4 (2) A household member as defined in section 356D-1
5 who, as a household member, occupies a unit in
6 the subject housing project;

7 (3) A guest of the tenant of the subject housing
8 project;

9 (4) A director, officer, employee, agent,
10 representative, or contractor of the authority;
11 provided that the person is acting within the
12 scope of employment or work, or discharging an
13 official duty for the authority;

14 (5) An employee, agent, or contractor of the United
15 States Department of Housing and Urban
16 Development;

17 (6) A person carrying out governmental duties
18 including but not limited to law enforcement and
19 emergency medical services;

20 (7) A person participating in a program authorized by
21 the authority; and

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1 (8) A person engaging in constitutionally protected
2 door-to-door communications or pamphleteering
3 between 9:00 a.m. and 8:00 p.m.

4 SECTION 2. Section 708-814, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§708-814 Criminal trespass in the second degree.** (1) A
7 person commits the offense of criminal trespass in the second
8 degree if:

9 (a) The person knowingly enters or remains unlawfully in
10 or upon premises that are enclosed in a manner
11 designed to exclude intruders or are fenced;

12 (b) The person enters or remains unlawfully in or upon
13 commercial premises after a reasonable warning or
14 request to leave by the owner or lessee of the
15 commercial premises, the owner's or lessee's
16 authorized agent, or a police officer; provided that
17 this paragraph shall not apply to any conduct or
18 activity subject to regulation by the National Labor
19 Relations Act.

20 For the purposes of this paragraph, "reasonable
21 warning or request" means a warning or request

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1 communicated in writing at any time within a one-year
2 period inclusive of the date the incident occurred,
3 which may contain but is not limited to the following
4 information:

5 (i) A warning statement advising the person that the
6 person's presence is no longer desired on the
7 property for a period of one year from the date
8 of the notice, that a violation of the warning
9 will subject the person to arrest and prosecution
10 for trespassing pursuant to section 708-814(1)(b),
11 and that criminal trespass in the second degree
12 is a petty misdemeanor;

13 (ii) The legal name, any aliases, and a photograph, if
14 practicable, or a physical description, including
15 but not limited to sex, racial extraction, age,
16 height, weight, hair color, eye color, or any
17 other distinguishing characteristics of the
18 person warned;

19 (iii) The name of the person giving the warning along
20 with the date and time the warning was given; and

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1 (iv) The signature of the person giving the warning,
2 the signature of a witness or police officer who
3 was present when the warning was given and, if
4 possible, the signature of the violator;

5 (c) The person enters or remains unlawfully on
6 agricultural lands without the permission of the owner
7 of the land, the owner's agent, or the person in
8 lawful possession of the land, and the agricultural
9 lands:

10 (i) Are fenced, enclosed, or secured in a manner
11 designed to exclude intruders;

12 (ii) Have a sign or signs displayed on the
13 unenclosed cultivated or uncultivated
14 agricultural land sufficient to give notice
15 and reading as follows: "Private Property".
16 The sign or signs, containing letters not
17 less than two inches in height, shall be
18 placed along the boundary line of the land
19 and at roads and trails entering the land in
20 a manner and position as to be clearly

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1 inches in height and shall be placed at
2 reasonable intervals along the boundary line
3 of the land and at roads and trails entering
4 the land in a manner and position as to be
5 clearly noticeable from outside the boundary
6 line.

7 For the purposes of this paragraph,
8 "unimproved or unused lands" means any land upon which
9 there is no improvement; construction of any
10 structure, building, or facility; or alteration of the
11 land by grading, dredging, or mining that would cause
12 a permanent change in the land or that would change
13 the basic natural condition of the land. Land remains
14 "unimproved or unused land" under this paragraph
15 notwithstanding minor improvements, including the
16 installation or maintenance of utility poles, signage,
17 and irrigation facilities or systems; minor
18 alterations undertaken for the preservation or prudent
19 management of the unimproved or unused land, including
20 the installation or maintenance of fences, trails, or
21 pathways; maintenance activities, including forest

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1 plantings and the removal of weeds, brush, rocks,
2 boulders, or trees; and the removal or securing of
3 rocks or boulders undertaken to reduce risk to
4 downslope properties; or

5 ~~[(e) The person enters or remains unlawfully in or upon the~~
6 ~~premises of any public housing project or state low-~~
7 ~~income housing project, as defined in section 356D-1,~~
8 ~~356D-51, or 356D-91, after a reasonable warning or~~
9 ~~request to leave by housing authorities or a police~~
10 ~~officer, based upon an alleged violation of law or~~
11 ~~administrative rule; provided that a warning or~~
12 ~~request to leave shall not be necessary between 10:00~~
13 ~~p.m. and 5:00 a.m. at any public housing project or~~
14 ~~state low-income housing project that is closed to the~~
15 ~~public during those hours and has signs, containing~~
16 ~~letters not less than two inches in height, placed~~
17 ~~along the boundary of the project property, at all~~
18 ~~entrances to the property, in a manner and position to~~
19 ~~be clearly noticeable from outside the boundary of the~~
20 ~~project property and to give sufficient notice that~~

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1 ~~the public housing project or state low-income housing~~
2 ~~project is closed to the public during those hours.]~~

3 (e) The person is a non-tenant:

4 (i) And a member of the public who enters or remains
5 without authorization in or upon any area of a
6 housing project that is not a public street,
7 road, highway, sidewalk, or city or state bus
8 stop, and is closed to the public as set forth in
9 section 356D- _____ where signs, containing letters
10 not less than two inches in height, are displayed
11 that read: "Closed to the Public - No
12 Trespassing", or a substantially similar message;
13 provided that the signs are placed at reasonable
14 intervals along the boundary line of the areas
15 that are closed to the public in a manner and
16 position as to be clearly noticeable from outside
17 the boundary line; or

18 (ii) Who enters or remains unlawfully in or upon any
19 area of a housing project, that is not a public
20 street, road, highway, sidewalk, or city or state
21 bus stop, and is closed to the public as set

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1 forth in section 356D-___, after a reasonable
2 warning or request to leave by the housing
3 authority or a police officer, based upon an
4 alleged violation of law or administrative rule,
5 notwithstanding any authorization provided by a
6 tenant of the subject housing project to the
7 person.

8 ~~[(2) As used in this section, "housing authorities" means~~
9 ~~resident managers or managers, tenant monitors, security guards,~~
10 ~~or others officially designated by the Hawaii public housing~~
11 ~~authority.]~~

12 (2) For the purposes of subsection (1)(e):

13 "Authorization" means permission given to a non-tenant to
14 enter the subject housing project, which is given either by a
15 tenant of the subject housing project, or housing authority.

16 "Housing authority" means a property manager, resident
17 manager, tenant monitors, security guards, or others officially
18 designated by the Hawaii public housing authority, for the
19 subject housing project.

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1 "Housing project" means a public housing project or elder
2 or elderly housing, as defined in section 356D-1, or state low-
3 income housing project, as defined in section 356D-51.

4 "Member of the public" means a person who is not:

5 (i) A tenant as defined in section 356D-1 or section
6 356D-51 who leases a unit in the subject housing
7 project;

8 (ii) A household member as defined in section 356D-1
9 who, as a household member, occupies a unit in
10 the subject housing project;

11 (iii) A guest of the tenant of the subject housing
12 project;

13 (iv) A Hawaii public housing authority director,
14 employee, authorized agent, representative or
15 contractor; provided that the person is acting
16 within the scope of employment or work, or
17 discharging an official duty for the authority;

18 (v) An employee, agent or contractor of the United
19 States Department of Housing and Urban
20 Development;

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- 1 (vi) A person carrying out governmental duties
2 including but not limited to law enforcement and
3 emergency medical services;
- 4 (vii) A person participating in a program authorized by
5 the Hawaii public housing authority; and
- 6 (viii) A person engaging in constitutionally protected
7 door-to-door communications and pamphleteering
8 between 9:00 a.m. and 8:00 p.m.

9 "Non-tenant" means a person who is not a tenant as defined
10 in section 356D-1 or section 356D-51, or household member as
11 defined in section 356D-1, at the subject housing project.

12 "Reasonable warning or request" means a warning or request
13 communicated in writing at any time within a one-year period
14 inclusive of the date the incident occurred, which may contain
15 but is not limited to the following information:

- 16 (i) A warning statement advising the person that the
17 person's presence is no longer desired in or on
18 the areas of the subject housing project that are
19 closed to the public for a period of one year
20 from the date of the notice, that a violation of
21 the warning will subject the person to arrest and

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1 prosecution for trespassing pursuant to section
2 708-814(1)(e), and that criminal trespass in the
3 second degree is a petty misdemeanor;

4 (ii) The legal name, any aliases, and a photograph, if
5 practicable, or a physical description, including
6 but not limited to sex, racial extraction, age,
7 height, weight, hair color, eye color, or any
8 other distinguishing characteristics of the
9 person warned;

10 (iii) The name of the person giving the warning along
11 with the date and time the warning was given; and

12 (iv) The signature of the person giving the warning,
13 and, if possible, the signature of the violator.

14 (3) Criminal trespass in the second degree is a petty
15 misdemeanor."

16 SECTION 3. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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1 SECTION 5. This Act shall take effect upon its approval.

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Report Title:

Hawaii Public Housing Authority Projects; Trespass

Description:

Provides that all Hawaii Public Housing Authority housing projects are closed to the public and amends criminal trespass in the second degree to allow for the prosecution of either any unauthorized person at the housing project, or any non-tenant who enters a housing project after receiving a written warning to not return for a period of one-year, notwithstanding any authorization provided by a tenant of the subject housing project. The Hawaii Public Housing Authority is required to post signs notifying the trespassers of illegal entry.



LATE

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

H.B. NO. 767, H.D. 1, RELATING TO THE HAWAII PUBLIC HOUSING AUTHORITY.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 24, 2015 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell Suzuki, Attorney General, or
Lance M. Goto, Deputy Attorney General.

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (the Department) appreciates the intent of this bill, but has concerns and recommends amendments.

The purpose of this bill is to clarify the offense of trespassing in the second degree as it applies to conduct at Hawaii Public Housing Authority (HPHA) housing projects. The bill allows the HPHA to post signs along the border of a housing project to provide notice that the project is private or government property closed to the general public. It provides that nonresidents of the project who enter or remain on such property without authorization by a tenant or the HPHA commit the offense of trespassing.

The Department has several concerns. First, it is generally understood that public housing project areas are open to the public. Some housing projects have public streets and bus stops within the project areas, and the general public should have access to these areas. The bill does not address the HPHA's power to close project property to the general public. The bill also does not address the issue of public streets and bus stops within project areas.

Second, on page 7, at lines 17-20, the bill provides that the term "nonresident" does not include "individuals who are on the property to carry out constitutionally protected activities or other governmental duties." This exception is not clear, and will likely be difficult for a prosecutor to disprove. It is not clear what would constitute an allowable "constitutionally protected" activity. And when the bill refers to "constitutionally protected activities or other governmental duties," it suggests that the "constitutionally protected activities" are "governmental duties."

Third, on page 8, at lines 5-11, the bill provides that a tenant can only provide authorization to a nonresident who has not been "convicted of any violation of the law involving narcotics, prostitution, vandalism, weapons, disturbance of the peace, loitering, threat to commit a violent act, or a violent act, on any public housing project within the past five years." This is a very troubling provision. A tenant will not be able to determine whether or not a person has been convicted of any of these offenses. Even if a tenant somehow had the capability of conducting local and national criminal background checks, those checks would not show that the conviction involved an offense committed on public housing project property.

Fourth, it should be noted that, with regard to the issue of authorization to enter or remain on housing project property, the HPHA will have to establish a system to track authorizations given to nonresidents by tenants and HPHA officials. When a police officer responds to a complaint of trespassing on public housing property, the officer will have to determine if the suspect was granted authorization to enter or remain on the property. It may be difficult if the authorizing tenant is not present or has gotten into a dispute with the guest and has denied granting authorization; or if the authorizing HPHA representative is not readily accessible.

Because of these numerous concerns about the present bill, the Department proposes the attached H.D. 2 for consideration by the Committee. The proposed draft was developed in cooperation with representatives of the HPHA. Section 1 of Proposed H.D. 2 adds a new section to chapter 356D, Hawaii Revised Statutes (HRS), to establish that all HPHA housing projects are closed to the public. Section 2 of the Proposed H.D. 2 expands the offense of Criminal Trespass in the Second Degree, in section 708-814(1)(e) and (2), HRS, to prohibit an unauthorized member of the public from entering or remaining on HPHA housing project property that is closed to the public. Section 2 of the Proposed H.D. 2 also provides definitions for certain terms, such as "authorization," "member of the public," and "reasonable warning or request," all of which are used in the proposed amendments to criminal trespass.

Section 1 of the Proposed H.D. 2: HPHA Housing Projects Closed to the Public

Currently, chapter 356D, HRS, does not authorize or empower HPHA to close its housing projects to the public. Accordingly, the unauthorized entry by a member of the public onto HPHA housing project property is not prohibited and does not constitute the offense of criminal

trespass. To prohibit such conduct, not only does the offense of Criminal Trespass in the Second Degree, pursuant to section 708-814(1)(e), HRS, need to be amended, but a new statutory section must be added to chapter 356D, HRS, that empowers HPHA to close its housing projects to the public. As such, in section 1 of the Proposed H.D. 2, the Department proposes a new section to be added to part I of chapter 356D, HRS, which closes all HPHA housing projects to the public. To ensure that the public is on notice that the housing project is closed to the public, the proposed new section requires HPHA to post signs along the boundary lines of the areas that are closed. This section also allows only the following individuals to be present on the housing project property that is closed to the public:

1. HPHA public housing tenants, household members, or guests (of the tenant) of the subject housing project;
2. HPHA Board of Directors, employees, agents, or contractors;
3. U.S. Department of Housing and Urban Development employees, agents, or contractors;
4. A person carrying out governmental duties such as law enforcement;
5. A person participating in a program authorized by HPHA; and
6. A person engaging in constitutionally protected door-to-door communication or pamphleteering during certain hours.

Section 2 of the Proposed H.D. 2: Proposed Amendments to Criminal Trespass in the Second Degree

Section 2 of the Proposed H.D. 2 amends section 708-814(1)(e) and (2), HRS, which relate to trespassing on HPHA housing project property. The proposed section 708-814(1)(e)(i), HRS, in the Proposed H.D. 2 expands criminal trespass in the second degree by prohibiting a non-tenant member of the public from entering or remaining on HPHA housing project property, that is closed to the public, unless the non-tenant has received authorization from either a tenant of the subject project or HPHA. Because the phrase “member of the public” is defined in the Proposed H.D. 2, this proposed subsection will not apply to or include the following persons:

1. HPHA public housing tenants, household members, or guests (of the tenant) of the subject housing project;
2. HPHA Board of Directors, employees, agents, or contractors;

3. U.S. Department of Housing and Urban Development employees, agents, or contractors;
4. A person carrying out governmental duties such as law enforcement; a person participating in a program authorized by HPHA;
5. A person participating in a program authorized by HPHA; and
6. A person engaging in constitutionally protected door-to-door communication or pamphleteering during certain hours.

As set forth in section 1 of the Proposed H.D. 2, proposed section 708-814(1)(e)(i), HRS, also requires signs to be posted on the housing project property so that the public is on notice that the property is closed to the public.

In the Proposed H.D. 2, section 708-814(1)(e)(ii), HRS, prohibits a non-tenant who has received a “reasonable warning or request to leave” (i.e., a written warning advising the person that the person’s presence is no longer desired on housing project property for a period of one (1) year) based on a violation of law or administrative rule, from returning to the HPHA housing project, even if a tenant of the subject housing project has provided permission to the person. The proposed amendment defines the phrase “reasonable warning or request to leave” to clarify that HPHA, like owners and lessees of commercial premises under section 708-814(1)(b), HRS, may issue a written trespass warning to a person that prohibits the person from returning to the subject housing project within a one-year period inclusive of the date the person allegedly violated the law or administrative rule.

The Department respectfully recommends the attached proposed draft amendment.

Proposed H.B. NO. 767, H.D. 2

A BILL FOR AN ACT

RELATING TO HAWAII PUBLIC HOUSING AUTHORITY PROJECTS.

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

1 SECTION 1. Chapter 356D, Hawaii Revised Statutes, is
2 amended by adding to part I a new section to be appropriately
3 designated and to read as follows:

4 "§356D- Closed to the Public. (a) Any area within a
5 housing project that is not a public street, road, highway,
6 sidewalk, or county or state bus stop, is closed to the public
7 where signs are displayed that read: "Closed to the Public - No
8 Trespassing", or a substantially similar message; provided that
9 the signs shall contain letters not less than two inches in
10 height and be placed at reasonable intervals along the boundary
11 line of the areas that are closed to the public in a manner and
12 position as to be clearly noticeable from outside the boundary
13 line.

14 (b) For the purposes of this section:

15 "Housing project" means a public housing project or elder
16 or elderly housing, as defined in section 356D-1, or state low-
17 income housing project, as defined in section 356D-51.

18 "Public" does not include the following persons:

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1 (1) A tenant as defined in section 356D-1 or section
2 356D-51 who leases a unit in the subject housing
3 project;

4 (2) A household member as defined in section 356D-1
5 who, as a household member, occupies a unit in
6 the subject housing project;

7 (3) A guest of the tenant of the subject housing
8 project;

9 (4) A director, officer, employee, agent,
10 representative, or contractor of the authority;
11 provided that the person is acting within the
12 scope of employment or work, or discharging an
13 official duty for the authority;

14 (5) An employee, agent, or contractor of the United
15 States Department of Housing and Urban
16 Development;

17 (6) A person carrying out governmental duties
18 including but not limited to law enforcement and
19 emergency medical services;

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1 (7) A person participating in a program authorized by
2 the authority; and

3 (8) A person engaging in constitutionally protected
4 door-to-door communications or pamphleteering
5 between 9:00 a.m. and 8:00 p.m.

6 SECTION 2. Section 708-814, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§708-814 Criminal trespass in the second degree.** (1) A
9 person commits the offense of criminal trespass in the second
10 degree if:

11 (a) The person knowingly enters or remains unlawfully in
12 or upon premises that are enclosed in a manner
13 designed to exclude intruders or are fenced;

14 (b) The person enters or remains unlawfully in or upon
15 commercial premises after a reasonable warning or
16 request to leave by the owner or lessee of the
17 commercial premises, the owner's or lessee's
18 authorized agent, or a police officer; provided that
19 this paragraph shall not apply to any conduct or

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1 activity subject to regulation by the National Labor
2 Relations Act.

3 For the purposes of this paragraph, "reasonable
4 warning or request" means a warning or request
5 communicated in writing at any time within a one-year
6 period inclusive of the date the incident occurred,
7 which may contain but is not limited to the following
8 information:

9 (i) A warning statement advising the person that the
10 person's presence is no longer desired on the
11 property for a period of one year from the date
12 of the notice, that a violation of the warning
13 will subject the person to arrest and prosecution
14 for trespassing pursuant to section 708-814(1)(b),
15 and that criminal trespass in the second degree
16 is a petty misdemeanor;

17 (ii) The legal name, any aliases, and a photograph, if
18 practicable, or a physical description, including
19 but not limited to sex, racial extraction, age,
20 height, weight, hair color, eye color, or any

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- 1 other distinguishing characteristics of the
2 person warned;
- 3 (iii) The name of the person giving the warning along
4 with the date and time the warning was given; and
- 5 (iv) The signature of the person giving the warning,
6 the signature of a witness or police officer who
7 was present when the warning was given and, if
8 possible, the signature of the violator;
- 9 (c) The person enters or remains unlawfully on
10 agricultural lands without the permission of the owner
11 of the land, the owner's agent, or the person in
12 lawful possession of the land, and the agricultural
13 lands:
- 14 (i) Are fenced, enclosed, or secured in a manner
15 designed to exclude intruders;
- 16 (ii) Have a sign or signs displayed on the
17 unenclosed cultivated or uncultivated
18 agricultural land sufficient to give notice
19 and reading as follows: "Private Property".
20 The sign or signs, containing letters not

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- 1 less than two inches in height, shall be
2 placed along the boundary line of the land
3 and at roads and trails entering the land in
4 a manner and position as to be clearly
5 noticeable from outside the boundary line;
6 or
7 (iii) At the time of entry, are fallow or have a
8 visible presence of livestock or a crop:
9 (A) Under cultivation;
10 (B) In the process of being harvested; or
11 (C) That has been harvested;
12 (d) The person enters or remains unlawfully on unimproved
13 or unused lands without the permission of the owner of
14 the land, the owner's agent, or the person in lawful
15 possession of the land, and the lands:
16 (i) Are fenced, enclosed, or secured in a manner
17 designed to exclude the general public; or
18 (ii) Have a sign or signs displayed on the
19 unenclosed, unimproved, or unused land
20 sufficient to give reasonable notice and

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1 reads as follows: "Private Property - No
2 Trespassing", "Government Property - No
3 Trespassing", or a substantially similar
4 message; provided that the sign or signs
5 shall contain letters not less than two
6 inches in height and shall be placed at
7 reasonable intervals along the boundary line
8 of the land and at roads and trails entering
9 the land in a manner and position as to be
10 clearly noticeable from outside the boundary
11 line.

12 For the purposes of this paragraph,
13 "unimproved or unused lands" means any land upon which
14 there is no improvement; construction of any
15 structure, building, or facility; or alteration of the
16 land by grading, dredging, or mining that would cause
17 a permanent change in the land or that would change
18 the basic natural condition of the land. Land remains
19 "unimproved or unused land" under this paragraph
20 notwithstanding minor improvements, including the

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1 installation or maintenance of utility poles, signage,
2 and irrigation facilities or systems; minor
3 alterations undertaken for the preservation or prudent
4 management of the unimproved or unused land, including
5 the installation or maintenance of fences, trails, or
6 pathways; maintenance activities, including forest
7 plantings and the removal of weeds, brush, rocks,
8 boulders, or trees; and the removal or securing of
9 rocks or boulders undertaken to reduce risk to
10 downslope properties; or

11 ~~[(e) The person enters or remains unlawfully in or upon the~~
12 ~~premises of any public housing project or state low-~~
13 ~~income housing project, as defined in section 356D-1,~~
14 ~~356D-51, or 356D-91, after a reasonable warning or~~
15 ~~request to leave by housing authorities or a police~~
16 ~~officer, based upon an alleged violation of law or~~
17 ~~administrative rule; provided that a warning or~~
18 ~~request to leave shall not be necessary between 10:00~~
19 ~~p.m. and 5:00 a.m. at any public housing project or~~
20 ~~state low income housing project that is closed to the~~

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1 ~~public during those hours and has signs, containing~~
2 ~~letters not less than two inches in height, placed~~
3 ~~along the boundary of the project property, at all~~
4 ~~entrances to the property, in a manner and position to~~
5 ~~be clearly noticeable from outside the boundary of the~~
6 ~~project property and to give sufficient notice that~~
7 ~~the public housing project or state low income housing~~
8 ~~project is closed to the public during those hours.]~~

9 (e) The person is a non-tenant:

10 (i) And a member of the public who enters or remains
11 without authorization in or upon any area of a
12 housing project that is not a public street,
13 road, highway, sidewalk, or city or state bus
14 stop, and is closed to the public as set forth in
15 section 356D- where signs, containing letters
16 not less than two inches in height, are displayed
17 that read: "Closed to the Public - No
18 Trespassing", or a substantially similar message;
19 provided that the signs are placed at reasonable
20 intervals along the boundary line of the areas

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1 that are closed to the public in a manner and
2 position as to be clearly noticeable from outside
3 the boundary line; or

4 (ii) Who enters or remains unlawfully in or upon any
5 area of a housing project, that is not a public
6 street, road, highway, sidewalk, or city or state
7 bus stop, and is closed to the public as set
8 forth in section 356D-___, after a reasonable
9 warning or request to leave by the housing
10 authority or a police officer, based upon an
11 alleged violation of law or administrative rule,
12 notwithstanding any authorization provided by a
13 tenant of the subject housing project to the
14 person.

15 ~~[(2) As used in this section, "housing authorities" means~~
16 ~~resident managers or managers, tenant monitors, security guards,~~
17 ~~or others officially designated by the Hawaii public housing~~
18 ~~authority.]~~

19 (2) For the purposes of subsection (1)(e):

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1 "Authorization" means permission given to a non-tenant to
2 enter the subject housing project, which is given either by a
3 tenant of the subject housing project, or housing authority.

4 "Housing authority" means a property manager, resident
5 manager, tenant monitors, security guards, or others officially
6 designated by the Hawaii public housing authority, for the
7 subject housing project.

8 "Housing project" means a public housing project or elder
9 or elderly housing, as defined in section 356D-1, or state low-
10 income housing project, as defined in section 356D-51.

11 "Member of the public" means a person who is not:

12 (i) A tenant as defined in section 356D-1 or section
13 356D-51 who leases a unit in the subject housing
14 project;

15 (ii) A household member as defined in section 356D-1
16 who, as a household member, occupies a unit in
17 the subject housing project;

18 (iii) A guest of the tenant of the subject housing
19 project;

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- 1 (iv) A Hawaii public housing authority director,
2 employee, authorized agent, representative or
3 contractor; provided that the person is acting
4 within the scope of employment or work, or
5 discharging an official duty for the authority;
- 6 (v) An employee, agent or contractor of the United
7 States Department of Housing and Urban
8 Development;
- 9 (vi) A person carrying out governmental duties
10 including but not limited to law enforcement and
11 emergency medical services;
- 12 (vii) A person participating in a program authorized by
13 the Hawaii public housing authority; and
- 14 (viii) A person engaging in constitutionally protected
15 door-to-door communications and pamphleteering
16 between 9:00 a.m. and 8:00 p.m.
- 17 "Non-tenant" means a person who is not a tenant as defined
18 in section 356D-1 or section 356D-51, or household member as
19 defined in section 356D-1, at the subject housing project.

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1 "Reasonable warning or request" means a warning or request
2 communicated in writing at any time within a one-year period
3 inclusive of the date the incident occurred, which may contain
4 but is not limited to the following information:

5 (i) A warning statement advising the person that the
6 person's presence is no longer desired in or on
7 the areas of the subject housing project that are
8 closed to the public for a period of one year
9 from the date of the notice, that a violation of
10 the warning will subject the person to arrest and
11 prosecution for trespassing pursuant to section
12 708-814(1)(e), and that criminal trespass in the
13 second degree is a petty misdemeanor;

14 (ii) The legal name, any aliases, and a photograph, if
15 practicable, or a physical description, including
16 but not limited to sex, racial extraction, age,
17 height, weight, hair color, eye color, or any
18 other distinguishing characteristics of the
19 person warned;

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- 1 (iii) The name of the person giving the warning along
2 with the date and time the warning was given; and
3 (iv) The signature of the person giving the warning,
4 and, if possible, the signature of the violator.

5 (3) Criminal trespass in the second degree is a petty
6 misdemeanor."

7 SECTION 3. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 4. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

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1 SECTION 5. This Act shall take effect upon its approval.

2

3

INTRODUCED BY: _____

4

BY REQUEST

Proposed H.B. NO. 767, H.D. 2

1

2 **Report Title:**

3 Hawaii Public Housing Authority Projects; Trespass

4

5 **Description:**

6 Provides that all Hawaii Public Housing Authority housing
7 projects are closed to the public and amends criminal trespass
8 in the second degree to allow for the prosecution of either any
9 unauthorized person at the housing project, or any non-tenant
10 who enters a housing project after receiving a written warning
11 to not return for a period of one-year, notwithstanding any
12 authorization provided by a tenant of the subject housing
13 project. The Hawaii Public Housing Authority is required to
14 post signs notifying the trespassers of illegal entry.

15