

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

BRIDGET HOLTHUS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 6, 2017

TO: The Honorable Senator Josh Green, Chair
Senate Committee on Human Services

The Honorable Senator Will Espero, Chair
Senate Committee on Housing

FROM: Pankaj Bhanot, Director

SUBJECT: **SB1241 – RELATING TO RESIDENCY REQUIREMENTS**

Hearing: February 6, 2017, 3:05 p.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) respectfully opposes the proposed change to section 346-29, Hawaii Revised Statutes (HRS), as a similar requirement was found to be unconstitutional in *Saenz v. Roe*, 526 U.S. 489 (1999). DHS defers to the Hawaii Public Housing Authority (HPHA) regarding the change to section 356D-42, HRS.

PURPOSE: The purpose of the bill is to establish residency requirements for eligibility for public assistance and state low-income housing, includes exemptions to requirements under certain circumstances.

The United States Supreme Court previously found a similar California provision requiring a residency requirement to be unconstitutional. In *Saenz v. Roe*, 526 U.S. 489 (1999), the Supreme Court ruled that states were not free to condition receipt of financial assistance through the imposition of residency tests that limited benefits for newly arrived residents.

Section 17-655-25, Hawaii Administrative Rules (HAR), details residency requirements that applicants for financial assistance must meet in order to be eligible for such benefits. This provision specifies that an individual meets the residency requirement if he/she demonstrates an

intent to remain in the State permanently or for an indefinite time. The provision of the HAR does not specify that an applicant be a resident in the State for at least sixty consecutive days before the date of their application for public assistance to be eligible to receive such benefits.

If the measure were to proceed, the Legislature should consider the impact on newcomers or returning residents who may have fled circumstances involving domestic violence, or returned to be with their families and require assistance. Creating disparities between newcomers and recipients who have resided in the state for a required time, may impact other resources, like schools, medical institutions, and lead to an increase of homeless individuals and families in the State.

Thank you for the opportunity to testify on this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 1241, RELATING TO RESIDENCY REQUIREMENTS.

BEFORE THE:

SENATE COMMITTEES ON HUMAN SERVICES AND ON HOUSING

DATE: Monday, February 6, 2017 **TIME:** 3:05 p.m.

LOCATION: State Capitol, Room 16

TESTIFIER(S): Douglas S. Chin, Attorney General, or
James W. Walther, Deputy Attorney General

Chairs Green and Espero and Members of the Committees:

This bill would require that a person must be a resident of the State for 60 consecutive days before the person is eligible for public assistance or public housing benefits. The residency requirement created by this bill could be challenged as violating the Fourteenth Amendment of the United States Constitution. We respectfully recommend that the bill should be held.

In *Saenz v. Roe*, 526 U.S. 489 (1999), the U.S. Supreme Court held that a state cannot condition eligibility for public assistance on a durational residency requirement. The plaintiffs in *Saenz* were California residents who had newly arrived from other states. California's Temporary Assistance for Needy Families (TANF) program limited these new residents, for the year after their arrival, to the amount of financial assistance they would have received in their state of prior residence, if that amount was less than what California would provide. The court held that the restriction was a violation of the Fourteenth Amendment of the U.S. Constitution as an infringement on the right to travel.

Although the right to travel is not explicitly mentioned in the U.S. Constitution, the *Saenz* Court found that the concept was "firmly embedded in our jurisprudence." *Id.* at 498. The concept embraces three components:

It protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those

travelers who elect to become permanent residents, the right to be treated like other citizens of that State.

Id. at 500. The right is so important as to be a "virtually unconditional personal right, guaranteed by the Constitution to us all[,]" and any restrictions on it would violate the equal protection clause "unless shown to be necessary to promote a *compelling* governmental interest." Id. at 498-499, quoting *Shapiro v. Thompson*, 394 U.S. 618 (1969) (emphasis in the original) (internal cites omitted).

Under the strict scrutiny standard applied by the court in *Saenz*, there would appear to be no compelling reason to justify a state's actions when it discriminates against a new resident. The Court rejected the idea that "a partial withholding of benefits constitutes a lesser incursion on the right to travel than an outright denial of all benefits" because "the discriminatory classification is itself a penalty." Id. at 504-505.

The Court also rejected any comparison to other areas in which a resident classification was upheld, such as when a state requires nonresidents to pay more for a hunting license, or restricts enrollment in a public college. Id. at 502 (internal cites omitted).

Permissible justifications for discrimination between residents and nonresidents are simply inapplicable to a nonresident's exercise of the right to move into another State and become a resident of that State.

Id. at 502.

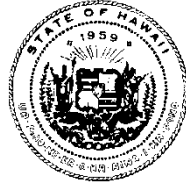
The plaintiffs in *Saenz* were new to the state of California but intended to reside there. The Court held that they had the right to be treated the same as long-time residents, especially given that their need for welfare benefits was neither related to the amount of time they had spent in the state, nor to the identity of their states of prior residence. Id. at 507.

The restriction created in this bill, although shorter in duration, may nonetheless be seen as more restrictive than the one year "penalty" imposed by California as described in the *Saenz* case. This is so because a family just moving to Hawaii would be ineligible for any public assistance at all for a 60-day period during which they are trying to establish a new residence. Such a complete restriction would be even more

likely to be seen as an impermissible penalty under the holding in *Saenz*. See, id. at 504.

It is fairly certain that any durational requirement of residency, as this bill would impose, would run afoul of the constitutional right found by the Court in the *Saenz* case. We respectfully recommend that this bill be held.

DAVID Y. IGE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

STATE OF HAWAII
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
POST OFFICE BOX 17907
HONOLULU, HAWAII 96817

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

**SENATE COMMITTEE ON HUMAN SERVICES
AND
SENATE COMMITTEE ON HOUSING**

**Monday, February 6, 2017
3:05PM
Room 016, Hawaii State Capitol**

In consideration of
SB 1241
RELATING TO RESIDENCY REQUIREMENTS

Honorable Chair Green, Honorable Chair Espero, and Members of the Senate Committee on Human Services and Senate Committee on Housing, thank you for the opportunity to provide testimony concerning Senate Bill 1241, relating to residency requirements.

The Hawaii Public Housing Authority (HPHA) appreciates the intent of SB 1241, which establishes residency requirements for eligibility for public assistance and state low-income housing, including exemptions to requirements under certain circumstances, but defers to the Department of the Attorney General regarding the legalities of durational residency requirements.

The HPHA appreciates the opportunity to provide the Senate Committees on Human Services and Housing with the HPHA's comments regarding SB 1241. We thank you very much for your dedicated support.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 10:25 PM
To: HMS Testimony
Cc: erinrutherford815@gmail.com
Subject: *Submitted testimony for SB1241 on Feb 6, 2017 15:05PM*

SB1241

Submitted on: 2/2/2017

Testimony for HMS/HOU on Feb 6, 2017 15:05PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Erin Rutherford	Individual	Support	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.

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