



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2207, PROPOSING AN AMENDMENT TO ARTICLE IX, SECTION 6, OF THE HAWAII STATE CONSTITUTION TO REQUIRE THE STATE AND ITS POLITICAL SUBDIVISIONS TO PLAN TO PRODUCE ENOUGH HOUSING TO MEET DEMAND IN ITS MANAGEMENT OF POPULATION GROWTH.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Friday, January 31, 2020

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Clare E. Connors, Attorney General, or
Matthew S. Dvonch, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill proposes an amendment to article IX, section 6 of the Hawai'i Constitution to require the State and its political subdivisions to plan to produce enough housing to meet demand.

Some provisions of the Hawai'i Constitution are self-executing, in that they supply sufficient rules "by means of which the right[s] given may be enjoyed and protected" without the need for further implementing legislation. *State v. Rodrigues*, 63 Haw. 412, 414, 629 P.2d 1111, 1113 (1981). Other provisions are not self-executing because they set forth principles only, and require further implementing legislation before they can be enforced. *Id.* When a constitutional provision is not self-executing, the Legislature has an opportunity to enact legislation that provides the standards and criteria by which the purposes of the provision can be accomplished.

The entirety of article IX, section 6 is not self-executing because it provides that the State and its political subdivisions shall plan and manage population growth "as provided by general law," meaning that it is up to the State and the counties to implement these provisions through duly-enacted legislation. The amendment provided

in this bill would also be subject to the power of the State and the counties to implement it through duly-enacted legislation.

The ballot question in this bill, however, does not include any reference to the powers of the State and the counties to plan for the production of enough housing to meet demand “as provided by general law.” Section 11-118.5, Hawaii Revised Statutes, requires a ballot question for a constitutional amendment to “be clear and it shall be neither misleading nor deceptive.” In determining whether a ballot question is clear, a court considers how the “average lay voter would interpret the ballot question.” *City and County of Honolulu v. State*, 143 Hawai‘i 455, 466, 431 P.3d 1228, 1239 (2018).

To remove any doubt in the minds of average lay voters that the State and the counties shall provide the standards and criteria for planning for the production of enough housing to meet demand through implementing legislation, and to be consistent with the existing text of article IX, section 6, we suggest amending the ballot question on page 2, lines 13-15, of the bill to read: “Shall the State and its political subdivisions be required to plan to produce enough housing to meet demand in its management of population growth, as provided by general law?”

Thank you for the opportunity to provide these comments.

LATE



SB 2207, PROPOSING AN AMENDMENT TO ARTICLE IX, SECTION 6, OF THE HAWAII STATE CONSTITUTION, TO REQUIRE THE STATE AND ITS POLITICAL SUBDIVISIONS TO PLAN TO PRODUCE ENOUGH HOUSING TO MEET DEMAND IN ITS MANAGEMENT OF POPULATION GROWTH

JANUARY 31, 2020 · SENATE JUDICIARY COMMITTEE · CHAIR SEN. KARL RHOADS

POSITION: Support.

RATIONALE: IMUAlliance supports SB 2207, proposing an amendment to Article IX, Section 6, of the Hawai'i State Constitution, to require the State and its political subdivisions to plan to produce enough housing to meet demand in its management of population growth.

Today, **the lack of affordable housing exacerbates the economic insecurity suffered by local families, which sex traffickers use to prey upon potential victims with false promises of financial stability and prosperity.** Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Researchers who authored the National Low Income Housing Coalition's *Out of Reach 2019* report found that a full-time worker would need to earn \$36.82/hour to afford a two-bedroom apartment at fair market value in our state, with Honolulu experiencing a 67 percent increase in fair market rent between 2005 and 2015.

Average rent for a two-bedroom unit surpassed \$2,000 in recent years, with minimum wage workers needing to log 111 hours per week to afford a modest one-bedroom apartment at fair market value and 146 hours per week to afford a two-bedroom—a number that is equivalent to working over 20 hours a day with no days off year-round. In the past five years alone, Honolulu

rent has increased by more than 25 percent. While 43 percent of Hawai'i residents are renters (a number that does not include individuals and families renting outside of the regulated rental market), they earn an average wage of \$16.68/hour, according to NLIHC, scarcely enough to meet their basic needs.

One out of every four households in Hawai'i report that they are "doubling up" or are three paychecks or less away from being homeless, per the Hawai'i Appleseed Center for Law and Economic Justice. Additionally, 63 percent of households are severely cost-burdened, following NLIHC data, meaning that they pay more than 30 percent of their income for housing costs, a number that rises to 83 percent of extremely low-income households, with only 74 homes available for every 100 households earning 80 percent of their respective area's median income.

Unsurprisingly, our state is now experiencing population decline. Hawai'i saw domestic out-migration increase for a third consecutive year in 2019, as the state's high cost of living continued to push people to the mainland. Census estimates show that our state's population dropped by more than 4,700 people, to 1,415,872, from July 2018 to July 2019, when births, deaths, and migration were accounted for. That's the biggest numerical population drop since 2015 and it made Hawai'i one of just ten states in the country to lose population in 2019, according to the U.S. Census Bureau. People are simply being priced out of paradise.

While this constitutional amendment may seem ambitious, **the Hawai'i Housing Planning Study released by SMS Research and Marketing Services this week states that Hawai'i needs to build 50,156 new homes—for sale and rent—over the next five years to meet demand.** Yet, the study notes that homebuilders produced only 2,675 new homes on average annually from 2014 to 2017, down from a 2,800-home annual average between 2011 and 2014. To satisfy future demand, therefore, our state must produce 10,000 new homes per year. Over the next decade, however, SMS projects that an annual average of under 2,000 new homes will be produced, nowhere near enough to meet demand. We cannot continue to allow the islands to be used as a private Monopoly board for real estate speculators. To ensure that our islands are affordable for ourselves and future generations, we must take bold action **now** to increase our affordable housing supply for working families and advance the goal of providing homes for all.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

**HEARING BEFORE THE SENATE COMMITTEE ON JUDICIARY
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 016
FRIDAY, JANUARY 30, 2020 AT 10:00 A.M.**

To The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokalole, Vice Chair; and
Members of the Committee on Judiciary,

**TESTIMONY IN SUPPORT OF SB2207 PROPOSING A
CONSTITUTIONAL AMENDMENT**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. I am writing share our support of SB2207.

The Maui Chamber of Commerce supports SB2207 to amend the constitution to require the State to plan and provide enough housing to meet demand in its management of population growth. We are in an affordable housing crisis and affordable housing and rentals are one of our top legislative priorities. We feel by including this language at that level in the State Constitution, it then creates a mandate and hopefully spurs bigger initiatives to solve the current crisis.

We appreciate the opportunity to testify on this matter and ask that this bill be passed.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

**Testimony Before the Senate Judiciary Committee
that would Amend SB 2207, Amending the Hawaii Constitution
to Require the State to to Meet Housing Demand
Galen Fox, January 31, 2020**

Chair Rhoads, Committee Members:

In testifying before the Senate Housing Committee on SB2046, which proposed amending Article IX, Section 5 of the Hawaii State Constitution to require the state to produce enough housing to meet demand, the Attorney General offered the following comment:

If the Legislature does not intend the provision to be self-executing, we suggest adding . . . “The legislature shall provide standard and criteria to accomplish the foregoing.”

The committee, according to its Chair, amended the bill accordingly.

It’s likely the Attorney General will make a similar comment on SB2207, which amends Article IX, Section 5 of the Hawaii State Constitution. The amended section might be changed to read:

Section 6. The State and its political subdivisions, as provided by general law, shall plan and manage the growth of the population to protect and preserve the public health and welfare[;], which shall include the production of enough housing to meet demand according to the legislature’s standards and criteria for accomplishing the foregoing; except that each political subdivision, as provided by general law, may plan and manage the growth of its population in a more restrictive manner than the State.”

Mahalo.

SB-2207

Submitted on: 1/28/2020 8:12:01 PM

Testimony for JDC on 1/31/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Oppose	No

Comments:

For me the bill is too light. Creating enough 'housing' to meet demands at what cost. Over population, 'monster home', close quarters can cause harm to public health and welfare as well. Currently we're seeing plagues - California & New Mexico has Black Death & China is facing a Coronavirus outbreak. Diamond Head, we saw multiple homes burned to the ground (look at history of homes affected by close quarters and you'll find issues with for the sake of living quarters, cramped spacing isn't the answer) - bringing neighborhoods/buildings closer together, increases the chances of groups of homes being burned down, by sparks flying. It doesn't address the homeless issues as many feel that shelters are the worst place for them to be. So, instead of looking toward building more or creating cramped quarters or taking away space that is available, maybe a more viable solution that may solve other problems as well.

For example, creating sleep pods in some areas. They have smoke detectors; rain/windproof; automated cleaning/sanitation (ie. bed bugs that I've heard claims of; bodily waste; etc.); etc. For those that feel unsafe in a shelter, the pods have doors to create a safe environment off the streets. Might also be used by some who had a bit too much to drink and fall asleep on bus benches. They can be made to charge a small fee or not, depending on the system. Which I'm sure could be adapted to track users as well, so maybe a few to test out.

Dormitory or maybe a YM(W)CA type facility, without the amenities (ie. swimming pool) but the basic concept of multiple rooms, and a group restroom/kitchen/lounge area.