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January 28, 2019

TO: The Honorable Senator Stanley Chang, Chair
Senate Committee on Housing

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 326 – RELATING TO THE HAWAII PUBLIC HOUSING AUTHORITY**

Hearing: Tuesday, January 29, 2019, 1:30 p.m.
Conference Room 225, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) opposes the measure as the repeal of the exemption from section 26-35, Hawaii Revised Statutes (HRS), would in essence make the director of DHS the chairman of the board of the Hawaii Public Housing Authority. This however, conflicts with section 356D-3, HRS, that provides in relevant part, that (a) the director of human services, or a designated representative shall be ex officio voting members of the board of directors; and (b) that the director of human services and the governor's representative shall be *ineligible* to serve as chairperson of the board.

PURPOSE: The purpose of the bill is to repeal the exemption of the Hawaii Public Housing Authority from certain administrative supervision by its board of directors regarding personnel matters.

Thank you for the opportunity to provide comments on this measure.

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Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

SENATE COMMITTEE ON HOUSING

Tuesday, January 29, 2019
1:30 PM - Room 225, Hawaii State Capitol

In consideration of

SB 326

RELATING TO THE HAWAII PUBLIC HOUSING AUTHORITY

Honorable Chair Chang and Members of the Senate Committee on Housing, thank you for the opportunity to provide testimony concerning Senate Bill (SB) 326, relating to the Hawaii Public Housing Authority.

The Hawaii Public Housing Authority (HPHA) **strongly opposes** the enactment of SB 326, which repeals the exemption of the HPHA from certain administrative supervision by its board of directors regarding personnel matters.

The referenced exemption from section 26-35(a)(4) was provided by the legislature during the bifurcation of the Housing and Community Development Corporation of Hawaii (HCDCH) into the HPHA and Hawaii Housing Finance & Development Corporation (HHFDC). The exemption was granted in order to allow both agencies an independent Board of Directors, where each members' vote is of equal weight. In addition, for the HPHA, this exemption also ensures that our agency is compliant with all U.S. Department of Housing and Urban Development (HUD) laws, rules, regulations, and guidance governing over 3,200 Public Housing Authorities (PHA), including the HPHA.

The HPHA Board of Directors (Board) consists of a total of eleven members: nine public members appointed by the governor (one of which must be a Public Housing tenant), the Director of Human Services (or a designated representative) and a representative of the Governor's Office. Each member brings different knowledge and experience from different fields. The proposed removal of this exemption from section 26-35(a)(4) will result in several damaging, unintended

consequences, which would severely hinder the Hawaii Public Housing Authority from administering the Federal Low Rent, Federal Section 8 Housing Choice Voucher, and Section 8 Contract Administration programs, rendering the HPHA federally non-compliant, and will conflict with the Hawaii Revised Statutes (HRS) that govern the HPHA, by providing one member of the Board power over a six member quorum, “whose affirmative vote shall have be necessary for all actions by the authority”.

HUD establishes and separates the roles of the Board and that of the Executive Director stating that “Commissioners and executive directors need to be cognizant of one another’s roles without overstepping or undermining the other”. The Board’s role, as mandated by HUD and through HUD Board trainings, is “The commissioner’s role is governance – establishing policy and ensuring oversight” whereas the executive director’s role and *responsibilities is “management”*.

HUD explicitly states “the executive director has the following responsibilities:

- Keeps commissioners informed
- Develops, implements, and oversees the operating budgets
- Ensures compliance with all federal laws and HUD guidelines
- Manages the day-to-day operations of the PHA
- Hires, evaluates, trains, and terminates staff
- Executes board-approved policies

The executive team at an authority includes more than the Executive Director or Chief Executive Officer. Depending on the size of the PHA, there may also be other executive staff. These staff members are hired by the Executive Director and are concerned with the day-to-day management of the PHA”.

Additionally, HUD ensures that PHAs are complaint by sending its representatives to train the Board. In the past, both the Director of the Office of Public Housing and the Chief Counsel of the Office of General Counsel, Region IX were sent to Hawaii to train the Board here at the HPHA’s offices. Their PowerPoint presentation states: “The local governing board is the council or other legislative body charged with governing the municipality. The powers of a municipal housing authority shall be exercised by the commissioners/officers of the PHA. It is the board’s responsibility to act in the best interest of the PHA”. The training also emphasizes that the Executive Director’s role is “the day-to-day administration of the PHA and its programs and includes:

- Hiring, training, supervision and termination of PHA staff
- Procurement of goods and services and oversight of all contract work
- Preparation of PHA budgets, supervision of cash management, and bank reconciliation
- Enforcing the lease (Public Housing) and family and landlord obligations (Section 8)
- Monitoring operations for fraud and abuse
- Maintaining overall compliance with Federal, State and local laws, as well as board adopted policies and procedures

Please note that there are ample examples where HUD had to get involved to prevent non-compliance in varying severity. For example, in 2002 when the Board of the HPHA, formerly known as the HCDCH, was put under the Corrective Action Order (CAO), the Board was heavily criticized for its micro management and the excessive number of meetings it held with the line staff on day-to-day operations. This was in direct conflict with the Board's By-laws and HUD policies on public housing governance. It took our agency ten years before we were able to close the CAO. More severe actions were HUD's takeover of the Housing Authority of New Orleans (HANO). One of the reasons HUD provided in their report is: "(4) the HANO board of commissioners has not effectively governed HANO and has interfered with its day-to-day operations, hiring, and contracting". Prior to the takeover of HANO, HUD's reports states that HUD has taken actions such as "withholding funding, twice requiring that the housing authority be managed by a commercial property management firm and sanctioning the board of commissioners" also "HUD attempted to prevent HANO's board of commissioners from continuing to interfere with the housing authority's daily operations by issuing a 'limited denial of participation' against the board. HUD rescinded the denial a year later when the board agreed to resign."

Therefore if the exemption from section 26-35(a)(4) is removed, and the Board gets involved with personnel decisions, a situation will arise where one member of the Board (DHS Director) will essentially have the veto power over the Board's final decision-making, which could nullify the Boards decisions in regards to employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the Board. Further, if the exemption from section 26-35(a)(4) is removed, the HPHA will be in violation of HUD by having the Board involved in the day to day operations.

The HPHA appreciates the opportunity to provide the Committee with the HPHA's testimony regarding SB 326 and urges the Committee to indefinitely defer this measure. We thank you very much for your dedicated support.

Resources for our testimony:

- HRS §356D-3 Board; establishment, functions, duties
- PIH website:

https://www.hud.gov/program_offices/public_indian_housing

Guidebooks:

Section 8 HCV (7420.10G):

www.hudclips.org

Public Housing:

https://www.hud.gov/program_offices/public_indian_housing/programs/ph/rhiip/phguidebook

A HUD FACT:

<https://www.hudexchange.info/onecpd/assets/File/PHA-Lead-the-Way-Roles-Responsibilities-Quick-Reference.pdf>