



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 29, S.D. 2, 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 THEIR MANAGEMENT OF POPULATION GROWTH.

BEFORE THE:

HOUSE COMMITTEE ON HOUSING

DATE: Thursday, March 18, 2021 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Room 423, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Sandra A. Ching,
Deputy Attorney General, at 587-3080)

Chair Nakamura and Members of the Committee:

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

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

Some provisions of the Constitution of the State of Hawai'i are self-executing. The self-executing provisions 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 section 6 of article IX 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 only establishes a general principle and

“requires more specific legislation to make it operative.” *Id.* The amendment provided in this bill, therefore, also would not be self-executing.

The ballot question in this bill, however, does not include any reference to the power 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 Cty. 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 section 6 of article IX, we suggest amending the ballot question on page 2 lines 1-3, 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.



SB 29, SD 2, 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 THEIR MANAGEMENT OF POPULATION GROWTH

MARCH 18, 2021 · HOUSE HOUSING COMMITTEE ·
CHAIR REP. NADINE K. NAKAMURA

POSITION: Support.

RATIONALE: Imua Alliance supports SB 29, SD 2, which amends the constitution to require the state to plan to provide enough housing to meet demand in its management of population growth.

Hawai'i is facing a looming eviction crisis. During COVID-19, unemployment skyrocketed to levels not seen since the Great Depression. A recent study found that our state is experiencing the slowest unemployment rate recovery in the nation, moreover, with our rate hovering at approximately 9 percent in December. Thousands of people who haven't lost their jobs have instead seen their employment hours and earnings slashed, as the economic downturn lingered throughout 2020 and into the new year.

Financial precarity has become the norm for many families, who are unable to pay their full mortgages or rent and have accumulated housing debts. Currently, the state's eviction moratorium protects these families from being removed from their homes. Yet, the eviction moratorium will eventually expire as the public health emergency passes, leaving thousands of people at risk of losing their housing. It is entirely plausible, though heartbreaking, that landlords may try to increase rental and other housing costs to recover economic losses that they incurred

during the pandemic, which would take a huge toll on tenants who are still struggling to get back on their feet.

Today, **our state's ongoing 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 2020* report found that a full-time worker would need to earn \$38.76/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 117 hours per week to afford a modest one-bedroom apartment at fair market value and 153 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 42 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 \$17.17/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, over 60 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 over 80 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.

Notably, housing costs increased during the pandemic. In Honolulu, median single-family home prices reached a record of \$880,000 last October, **driven largely by sales to residential property investors.** 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 8,866 people from July 2019 to July 2020, when births, deaths, and migration were accounted for. That population drop is nearly double the loss seen in 2011, when Hawai'i one of just ten states in the country to lose population, according to the U.S. Census Bureau. People are simply being priced out of paradise.

Without question, Hawai'i's lack of affordable housing exacerbates our state's homelessness crisis. In a recently released report, Chief Medical Examiner Dr. Masahiko Kobayashi said that 127 people who were considered homeless at the time of their deaths died on O'ahu in 2019, up from 120 deaths in 2018 and an increase of 46 percent from 2017 (87 deaths). Roughly 30 percent of children who are living on the streets will be approached for sexual exploitation within 48 hours of being away from home, according to the National Center for Missing and Exploited Children, with over 80 percent being approached for the commercial sex trade during the course of their time on streets. A federal study found that an estimated 38,600 runaway youth have been sexually assaulted, in the company of someone known to be sexually abusive, or engaged in sexual activity in exchange for money, food, or shelter.

Unsheltered keiki are perceived as easy targets for sex traffickers because they lack stable shelter, a supportive environment, and financial resources, placing them at greater risk of forced prostitution and sexual servitude. Traffickers exploit our limited number of available shelter beds to lure young people into exploitation. As the homeless childcare provider Covenant House observes, traffickers tell homeless youth that shelters are full and ask, "Where are you going to go? Why don't you come with me? I'll take care of you." Coupled with threats of and actual physical and sexual violence against the victims or their families, these coercive techniques compel runaway youth to remain enslaved.

LGBTQ youth, who comprise an estimated 40 percent of the runaway and homeless youth population in the United States, are exponentially more likely to fall prey to human traffickers because of discrimination, family and community trauma, and a longing for comfort and acceptance (an estimated 26 percent of LGBTQ adolescents are rejected by their families and put out of their homes simply for being open and honest about who they are). In providing care for victims of human trafficking, we have heard their stories hundreds of times.

Given these problems, **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 guarantee access to affordable housing for working families and ensure that people who are participating in our state's housing market do not face price gouging as they strive to achieve a successful financial recovery.

Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · kris@imuaalliance.org



Support SB 29

Aloha Chair Nakamura, Vice Chair Hashimoto, and members of the House Committee on Housing,

Faith Action Housing NOW! supports SB 29, which amends the State Constitution to require the state and its political subdivisions to plan to produce enough housing to meet demand.

The lack of supply of housing Hawai'i residents can afford (defined by housing costs that make up no more than 30 percent of a household's income) is a well-documented problem. The Hawai'i Housing Finance & Development Corporation (HHFDC) published figures in its 2019 Housing Planning Study stating the quantity of the needs broken down by income classification (see Table 32). However, this has been where our State stops. It stops at identifying the needs but not planning and firmly committing to meet the needs.

There is nothing left to study. The only actions we need are to create and execute plans that address the State-identified need for housing. It is not necessarily the State's responsibility to physically build all of the housing to meet the demand at the identified income level. It will be important to account for private, public-private partnerships, and public housing developments that total up to the housing quantities needed by income classifications. The State and jurisdictions within need to be mere facilitators. To the extent that private development does not adequately address the housing shortage, our State and Counties need to fill in the rest of the need with its own investments because that is what is in the best interest of the public.

It is in the best interest of the public that all residents of this State have a safe, secure, and truly affordable (as defined above in this testimony) home to live. Housing stability is the foundation that allows people to worry about their next levels of needs instead of being stuck because they are burdened by the unsustainable costs to simply survive in the communities in which we contribute our talents, dreams, and services.

HousingNOW! supports the passage of SB 29.

Mahalo for your consideration,

Foo Pham

Faith Action

HousingNOW! Chair



March 17, 2021

Representative Nadine K. Nakamura, Chair
Representative Troy N. Hashimoto, Vice-Chair
House Committee on Housing

Strong Support of SB 29, SD2, 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 THEIR MANAGEMENT OF POPULATION GROWTH.

**HSG Hearing: Thursday, March 18, 2021, 9:15 a.m.,
VIA VIDEOCONFERENCE in Conference Room 423**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, and utility companies. LURF's mission is to research, educate and advocate for reasonable, rational, and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to express its **strong support for SB 29, SD2**, which proposes 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 their management of population growth.

LURF's Position. LURF members lead the state in the production of affordable and market housing units and support the purpose and intent of this measure, as it will make 201H projects available to thousands of more prospective qualified buyers and can help reduce Hawaii's severe housing shortage.

Housing needed at all income levels. LURF supports providing housing for all income levels and supports the current efforts of Hawaii Housing Finance and Development Corporation (HHFDC) and private homebuilders to facilitate and build housing for all of Hawaii's residents, and with a focus on housing for incomes of 140% area median income (AMI) and below.

According to HHFDC's Hawaii Housing Planning Study, 2019, during the 2020-2025 period, the statewide demand for housing units at all income levels is approximately 50,156. Of this number, approximately 36,305 units will be needed by Hawaii's workforce and lower income households (i.e., those earning 140% and below the area median income (AMI) as established by the U.S. Department of Housing and Urban Development). Of the total units, approximately 26,239 units (52%) are estimated to be needed for households earning 80% and below the AMI. Another 10,066 units (20%) are estimated to be needed for households earning from 80-140% AMI.

Housing is a necessity and a foundation for stable families and strong communities. However, as confirmed by the above-referenced 2019 HHFDC Study, Hawaii is suffering from a housing emergency, due to the severe shortage of housing, and planning to produce enough housing to meet demand should be prioritized in the population growth management activities of the State and its political subdivisions. This measure proposes an amendment to the State Constitution to require the State and the counties to plan to provide sufficient housing as part of its management plan for state population growth, which will address and hopefully resolve the current housing emergency.

For the reasons stated above, LURF **strongly supports SB 29, SD2**, and respectfully urges your Committee's favorable consideration of this bill.

Thank you for the opportunity to present testimony regarding this matter.

SB-29-SD-2

Submitted on: 3/17/2021 4:16:25 PM

Testimony for HSG on 3/18/2021 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Thomas Brandt	Individual	Support	No

Comments:

Support!