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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
ON
HOUSE BILL NO. 1863, H.D. 1

February 11, 2022
2:15 p.m.
Room 325 and Videoconference

RELATING TO LANDLORD-TENANT DISPUTES

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 1863, H.D. 1, makes an unspecified general fund appropriation in FY 23 to the Judiciary to contract for legal services representation for residential tenants in landlord-tenant disputes including evictions.

B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.

DAVID Y. IGE
GOVERNOR



CATHY BETTS
DIRECTOR

JOSEPH CAMPOS II
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

February 10, 2022

TO: The Honorable Representative Mark M. Nakashima, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Cathy Betts, Director

SUBJECT: **HB 1863 HD1 – RELATING TO LANDLORD-TENANT DISPUTES.**

Hearing: February 11, 2022, 2:15 p.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent, defers to the Judiciary, and provides comments.

PURPOSE: The purpose of the bill is to provide for state-funded access to legal services to residential tenants in actions or proceedings for possession, with full access to each income-eligible tenant available by 7/1/2027. Authorizes attorneys, paralegals, and law students to provide the legal services. Appropriates funds for the Judiciary to contract for the legal services. Effective 1/1/2050. (HD1)

Housing stability is a fundamental necessity for individuals and families to succeed in school and work, maintain a healthy life, and build strong communities. In 2019, nearly 40% of Hawaii's households were renters, and in 2021, Hawaii's renters paid nearly 30% of their income to rent.¹ The continuing pandemic health and economic impacts, multiple disaster events, soaring housing sales, rising rents, and increasing costs for food and other necessities make fixed- and low-income residents more vulnerable to housing instability and evictions.

¹ See, https://nlihc.org/sites/default/files/SHP_HI.pdf

Free civil legal services are needed to assist families in this housing environment. Ideally, a general increase in free civil legal services would assist low-income Hawaii residents with multiple consumer or other civil legal needs.

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



The Judiciary, State of Hawai'i

Testimony to the Thirty-First Legislature, Regular Session of 2022

House Committee on Judiciary & Hawaiian Affairs

Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Friday, February 11, 2022, 2:15 PM
State Capitol, Conference Room 325
VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

by:

Shellie Park-Hoapili
Staff Attorney, Hawai'i Supreme Court

Bill No. and Title: House Bill No. 1863, HD1, Relating to Landlord-Tenant Disputes.

Purpose: Provides for state-funded access to legal services to residential tenants in actions or proceedings for possession, with full access to each income-eligible tenant available by 7/1/2027. Authorizes attorneys, paralegals, and law students to provide the legal services. Appropriates funds for the judiciary to contract for the legal services. Effective 1/1/2050.

Judiciary's Position:

The Judiciary supports the intent of the bill but believes the legislation may be unnecessary. Currently, there are two pilot projects that appear to advance the goal envisioned by this bill to increase access to representation for residential tenants in residential landlord-tenant disputes -- (1) the Tenant-Advocate Pilot Project in the first circuit; and (2) the Tenant Volunteer Attorney and Volunteer Assistant Pilot Project in the second circuit. Both pilot projects were established by orders of the supreme court. Both pilot projects have been extended for an additional year -- until February 11, 2023 for the first circuit and until February 23, 2023 for the second circuit. Perhaps it may be prudent to allow these pilot projects to be conducted for an additional year to better determine the impact and effect of the proposed legislation.

Should the Committee decide to proceed further with HB1863, HD1, the Judiciary expresses its concerns. The Hawai'i Supreme Court controls the conduct of attorneys, self-represented parties, and persons qualified to represent others in court. Any change to regulating practice in the courts should be considered and adopted through rules by the supreme court.

Thank you for the opportunity to submit testimony on this measure.



February 10, 2022

Re: Testimony in Support of HB 1863, Relating to Landlord-Tenant Disputes

To Chair Nakashima, Vice Chair Matayoshi, and members of the Judiciary & Hawaiian Affairs Committee:

Thank you for the opportunity to provide a national perspective on HB 1863, which would provide a right to counsel for tenants facing eviction. My organization, the National Coalition for a Civil Right to Counsel, has been involved in [all sixteen successful eviction right to counsel bills to date](#), and we are currently supporting efforts in dozens of other jurisdictions around the country. By passing this bill, Hawaii would become the fourth state to enact a right to counsel for tenants, joining Washington State, Maryland, and Connecticut.

Hawaii's eviction proceedings suffer from a massive representational imbalance seen all over the country. As [reported](#) by Lawyers for Equal Justice, only 5% of Hawaii tenants are represented, compared to 70% of landlords, and that hearings lasted less than 2 minutes on average. These statistics help explain in part why 50% of Hawaii tenants default on their eviction proceedings. At the same time, evictions have a potentially massive impact not just on housing stability, but also child custody, employment, mental/physical health, and childhood education.

The results from right to counsel jurisdictions have validated what has been long known: representation keeps tenants in their homes or otherwise helps preserve housing stability. [New York City](#), the first to provide such a right and the city with the most evictions in the country, has seen **84% of tenants remaining in their homes while the eviction filing rate dropped by 30% from 2014 to 2019**. [San Francisco](#) saw a **10% filing rate drop in just one year**, and two-thirds of all represented tenants are staying housed. In [Cleveland](#), 93% of tenants represented by counsel are avoiding eviction or an involuntary move. And [New York City housing court judges testified](#) that the right to counsel had made their courts more efficient and just. Even in cases where there are no legal defenses, lawyers take critical action to help tenants secure future housing by obtaining extra time to move (which also helps ensure tenants do not lose their belongings), reducing rent arrears, and negotiating to have the eviction not on the tenant's record.

Even before any city had enacted a right to counsel, studies had demonstrated that guaranteeing counsel for tenants changes the game in terms of outcomes:

- Stout, a financial analysis company that has produced extensive right to counsel reports in a number of cities, has [consistently found](#) that **a right to counsel leads to more than 90% of tenants avoiding disruptive displacement**. And Stout has also consistently found that a right to counsel saves millions more than it costs up front. For instance, in Philadelphia, they found that a **\$3.5 million investment in right to counsel would yield \$45 million in savings**.
- A [California study](#) found that tenants with full representation stayed in their units three times as often as those receiving limited legal assistance or no legal assistance, and none of the full representation tenants paid their landlords anything, compared to over 50% of tenants with limited assistance. When tenants did have to move, the fully represented tenants were given twice as long to do so.

- In [Hennepin County Minnesota](#), represented tenants were twice as likely to stay in their homes, received twice as long to move if necessary, and were four times less likely to use a homeless shelter than those without counsel. The rate of tenants who won or settled their cases was 96% for those with counsel but only 62% for those without counsel. Most dramatically, 78% of represented tenants left with a clean eviction record, compared to 6% of unrepresented tenants.
- A [California study](#) found **where tenants had to move, 71% of represented tenants had obtained a new rental unit one year later, compared to only 43% of pro se tenants.**

Putting aside the numbers, it is impossible to overstate how critical this bill is, both before and during COVID-19. Eviction cases implicate virtually every basic human need a family can have: safety, mental and physical health, child custody, employment, education, and so on. Yet the massive imbalance of power between landlords and tenants in the courtroom has led to the evictions process becoming a pro forma procedure devoid of due process that nearly always yields the same result regardless of the facts or law. In Baltimore, where only 1% of tenants had representation prior to the passage of a right to counsel, a [study](#) found that **80% of tenants had a potential defense to eviction but only 8% successfully did so without representation.** And during COVID-19, peoples' lives are literally at risk when they lose their housing. Plus the COVID-19 protections put into place by the federal and state governments, such as rent relief and mediation, only become fully effective with the provision of counsel. For instance, many tenants without counsel will be unable to secure rental assistance, or will secure it only to have their landlords evict them anyway. The right to counsel is what makes these other protections meaningful.

We are happy to answer any questions you may have, as we have done for policymakers in many other jurisdictions. Material we could cover includes cost/funding questions, implementation and scale up, experience in other jurisdictions, and more.

Thank you for your consideration of this important bill.

Sincerely,

John Pollock
Coordinator, NCCRC



February 11, 2022

The Honorable Mark Nakashima, Chair

House Committee on Judiciary and Hawaiian Affairs

Via Videoconference

RE: H.B. 1863, HD1, Relating to Landlord-Tenant Disputes

HEARING: Friday, February 11, 2022, at 2:15 p.m.

Aloha Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 10,800 members. HAR **opposes** House Bill 1863, HD1, which provides for state-funded access to legal services to residential tenants in actions or proceedings for possession, with full access to each income-eligible tenant available by 7/1/2027. Authorizes attorneys, paralegals, and law students to provide the legal services. Appropriates funds for the Judiciary to contract for the legal services.

Evicting a tenant is a costly process for a housing provider, which involves attorney fees or going to the court themselves. Additionally, the process to find a new tenant is time consuming and expensive as well, such as advertising, vetting new tenants, and making any repairs. As such, a housing providers would much rather avoid having to go through the eviction process. If it has reached to the point of going through eviction proceedings, a housing provider would have not been receiving rent for a while or for health and safety reasons, such as threatening violence or damaging the unit.

HAR would also note that there are non-profit groups, such as the Legal Aid Society of Hawai'i that provides these types of services. Or, there are pilot projects being done by the Judiciary to help tenants. As such, while we are not opposed to legal aid for income-eligible tenants, it should be equally provided to housing providers who also have large costs, such as for non-payment of rent or health and safety issues.

Mahalo for the opportunity to testify.

HB-1863-HD-1

Submitted on: 2/10/2022 1:35:43 PM

Testimony for JHA on 2/11/2022 2:15:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Brandee Menino	HOPE Services Hawai'i	Support	Yes

Comments:

Hope Services Hawai'i strongly supports this bill to provide legal counsel to renters facing eviction.

HB-1863-HD-1

Submitted on: 2/10/2022 1:59:12 PM

Testimony for JHA on 2/11/2022 2:15:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kristen Alice	Community Alliance Partners	Support	Yes

Comments:

Community Alliance Partners strongly supports this bill.

TESTIMONY IN SUPPORT OF HB 1863, HD 1

TO: Chair Nakashima, Vice-Chair Matayoshi, & Committee Members

FROM: Nikos Leverenz
Grants & Advancement Manager

DATE: February 11, 2022 (2:15 PM)

Hawai'i Health & Harm Reduction Center (HHRC) **supports** HB 1863, HD1, which would provide state-funded access to legal services to residential tenants in actions or proceedings for possession.

Access to safe and stable housing is a foundation for maintaining family cohesion, physical and mental health, continued employment, and educational opportunities. In the context of eviction proceedings, a [2018 report from Lawyers for Equal Justice](#) found that only 5% of all tenants are represented. This is not a surprising figure.

HHRC has seen the tangible beneficial impact of legal services for its clients across its programs through its medical-legal partnership with Legal Aid Services of Hawaii. These legal services have helped settle problems with landlords and utility companies, among other health-harming legal needs.

HHRC Executive Director Heather Lusk serves as Board Chair of [Partners in Care O'ahu](#), a planning, coordinating, and advocacy alliance that develops recommendations for programs and services to fill needs within O'ahu's continuum of care for homeless persons. HHRC provides homeless outreach and housing placement navigation services on Oahu in Region 1 (Honolulu) and Region 6 (Upper Windward Coast).

HHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai'i and the Pacific. We work with many individuals impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those related to substance use and mental health conditions. Many of our program clients and participants have also been deeply impacted by trauma, including histories of physical, sexual, and psychological abuse.

Thank you for the opportunity to testify on this measure.

HB-1863-HD-1

Submitted on: 2/10/2022 1:03:14 PM

Testimony for JHA on 2/11/2022 2:15:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Peter Koulogeorge	Individual	Support	Yes

Comments:

Research proves that providing legal representation for those facing evictoin will make it far more likely that they can stay in their homes. Under current conditions, eviction court does not execute fair trials. This body needs to understand that evictions are detrimental to the stability of a household. WWithout stable access to shelter, a person cannot stand on solid ground. If you aren't on solid ground, you can't meet your own needs or the needs of your family in a meaningful way. Families who are thrown out of their homes are in extreme desperation and we need to recognize that these people really need our help, and that by helping them we will be creating far more good for our community than harm. Landlords have the capital they need to be legally represented in court and most tenants don't have access to legal support, which means they can't defend themselves. It's completely unfair and imbalanced and it leads to a situation where eviction court is just a formality through which people swiftly lose access to their homes. This bill is a step in the right direction and needs to be fully funded and implemented within 1 year of passing.

HB-1863-HD-1

Submitted on: 2/10/2022 1:27:17 PM

Testimony for JHA on 2/11/2022 2:15:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
kevin landers	Individual	Support	No

Comments:

Aloha

You should support this measure as the bare minimum of action to be taken on behalf of the most vulnerable amidst the housing crisis we are experiencing. Utilize your power for the greater good - tenant's are organizing themselves because this institution has failed working people so consistently for so long.

HB-1863-HD-1

Submitted on: 2/10/2022 2:04:34 PM

Testimony for JHA on 2/11/2022 2:15:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dylan	Individual	Support	No

Comments:

The majority of tenants facing eviction do not have legal representation whereas the majority of landlords do have legal representation. This results in an imbalance in power which favors landlords and results in many tenants needlessly losing their housing contributing to the already overwhelming issue of housing insecurity in Hawai'i. States which have adopted measures such as HB1863 have seen a clear drop in the rates of evictions. This is the absolute minimum the state can do to ensure adequate and safe housing for tenants in Hawaii. By itself this is insufficient, however, and we must also enact more robust protections for tenants such as rent control and just-cause eviction legislation. In conclusion, despite the limitations of HB1863 I believe it is a step in the right direction.

LATE

HB-1863-HD-1

Submitted on: 2/11/2022 7:26:09 AM

Testimony for JHA on 2/11/2022 2:15:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
shantee brown	Individual	Support	No

Comments:

please support HB1863 HD1

LATE

HB-1863-HD-1

Submitted on: 2/11/2022 11:32:25 AM

Testimony for JHA on 2/11/2022 2:15:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Catherine Chen	Individual	Support	No

Comments:

I support HB 1863.