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EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

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 CONSUMER PROTECTION & COMMERCE
ON
HOUSE BILL NO. 1863

February 2, 2022
2:00 p.m.
Room 329 & Videoconference

RELATING TO LANDLORD-TENANT DISPUTES

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

House Bill No. 1863 proposes the following:

- Subject to availability of funding, requires the Judiciary to contract with certain entities to provide legal representation to residential tenants in actions or proceedings for possession, provided that full access to income-eligible tenants be available by July 1, 2027.
- Authorizes attorneys, or paralegals and law students, under the general supervision of an attorney with the contracted agency, to provide representation services in an action or proceeding for possession.
- Makes an unspecified general fund appropriation in FY 23 to the Judiciary to contract for the representation services.

B&F notes that 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.



The Judiciary, State of Hawai'i

Testimony to the Thirty-First Legislature, 2022 Regular Session

House Committee on Consumer Protection & Commerce

Representative Aaron Ling Johanson, Chair

Representative Lisa Kitagawa, Vice Chair

Wednesday, February 2, 2022, 2:00 PM

State Capitol, Conference Room 329

VIA VIDEOCONFERENCE

WRITTEN TESTIMONY ONLY

by:

Shellie Park-Hoapili

Staff Attorney, Hawai'i Supreme Court

Bill No. and Title: House Bill No. 1863, 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.

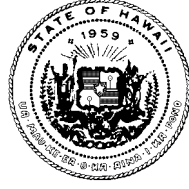
Judiciary's Position:

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. The Second Circuit pilot project has been extended an additional year (until February 28, 2023), and a similar one-year extension was recently requested for the First Circuit pilot project. 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, 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.

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 1, 2022

TO: The Honorable Representative Aaron Ling Johanson, Chair
House Committee on Consumer Protection & Commerce

FROM: Cathy Betts, Director

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

Hearing: Tuesday, February 2, 2022, 2:00 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 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 legal services. Appropriates funds for the Judiciary to contract for the legal services.

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. Free civil legal services are needed to assist families in this housing environment. Ideally, a

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

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.



February 1, 2022

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

To Chair Johanson, Vice Chair Kitagawa, and members of the Committee on Consumer Protection and Commerce:

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