



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 2252, RELATING TO HOUSING ACCOUNTABILITY.

BEFORE THE:

SENATE COMMITTEE ON HOUSING

DATE: Tuesday, February 8, 2022 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Conference Room 225, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Ciara W.K. Kahahane, Deputy Attorney General

Chair Chang and Members of the Committee:

The Department of the Attorney General opposes this bill due to the following serious concerns.

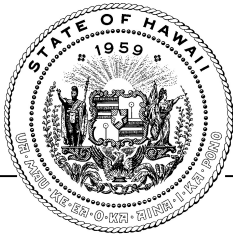
This bill amends section 226-19, Hawaii Revised Statutes (HRS), to add a new subsection (c), under which any person or agency may commence a civil action against the State in the circuit court where the person resides alleging that the State: (i) is not in compliance with one or more of the objectives, policies, and guidelines provided in section 226-19; (ii) has failed to perform any act or duty required to be performed under section 226-19; or (iii) in exercising any duty required to be performed under section 226-19, has not complied with the provisions of section 226-19.

Section 226-19, HRS, sets forth broad, aspirational objectives and policies for the State's socio-cultural advancement with regard to housing. This bill authorizes any person or agency to sue the State for damages, plus a civil fine of up to \$1,000 for an alleged failure to meet these objectives and policies. The objectives and policies, however, are so broad and open to interpretation that any manner of State action with respect to housing might be deemed a violation. The objectives and policies are also so wide-ranging that the State might allegedly violate one provision while attempting to comply with another. Further, a limitless number of plaintiffs could bring suit under this bill for the same or similar grievances. The bill could therefore expose the State to

potentially unlimited liability for perceived violations even when government has made best efforts to meet the objectives and policies set forth in section 226-19, HRS, and divert limited resources from providing additional housing to defending against and possibly paying for damages and fines under this bill.

Additionally, the term "agency" is not defined for purposes of this section, and it is not clear how the venue for an agency's lawsuit against the State pursuant to this section would be determined, as an agency does not normally "reside" in a particular circuit.

For the reasons stated above, we respectfully ask the Committee to hold this bill.



**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

DAVID Y. IGE
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Statement of
MARY ALICE EVANS
Director, Office of Planning and Sustainable Development
before the
SENATE COMMITTEE ON HOUSING
Tuesday, February 8, 2022
1:00 PM
State Capitol, Conference Room 225 and Videoconference

in consideration of
SB 2252
RELATING TO HOUSING ACCOUNTABILITY.

Chair Chang, Vice Chair Kanuha, and Members of the Senate Committee on Housing.

The Office of Planning and Sustainable Development (OPSD) offers **comments** on SB 2252, which allows a private right-of-action against the State for a failure to comply with certain housing objectives.

OPSD notes that SB 2252 proposes to amend HRS Section 226-19 Objectives and policies for socio-cultural advancement – housing. The Hawaii State Planning Act of 1978 which established the Hawaii State Plan sets forth the broad planning and policy framework and serves as a guide for the long-term development of the State. The objectives and policies provide policy guidance and are not intended to be requirements subject to civil right-of-action in the courts. Accordingly, placement of the right-of-action provisions in the State Planning Act is not appropriate.

OPSD defers to the Hawaii Housing Finance and Development Corporation relative to any housing-related implications of this measure.

Thank you for the opportunity to testify on this measure.