



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

ON THE FOLLOWING MEASURE:

S.B. NO. 3169, S.D. 1, RELATING TO HOMELESSNESS.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, February 23, 2022 **TIME:** 10:05 a.m.

LOCATION: State Capitol, Room 211, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Ciara W.K. Kahahane,
Deputy Attorney General, at 586-8373)

Chair Dela Cruz and Members of the Committee:

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

This bill establishes a low-income tiny home village pilot program under the Department of Human Services (DHS) to provide long-term housing and services to homeless individuals and individuals whose income is at or below fifty percent of the area median income for the State. Among other things, DHS is required to cooperate with the counties, the Hawai'i Housing Finance and Development Corporation, and other appropriate agencies to administer and oversee the low-income tiny home pilot program. The bill also exempts the projects from certain laws for the duration of the underlying state land leases.

The concerns that we had with exemptions from sections 37-41, 37-74, and 40-66, Hawaii Revised Statutes (HRS), in the original draft of this bill have been resolved in Senate Draft 1.

Our comments on the original draft of this bill also addressed an exemption from the requirements of section 103-2, HRS, which states that all revenues of the State or any agency thereof not specifically appropriated to other purposes shall be general realizations of the State's general fund. This exemption is still present in section 2, paragraph (5), on page 4, line 7, of S.D. 1, but the purpose and desired effect of this exemption with respect to low-income rentals, tiny home villages, or kauhale built on

state land under the Governor's 2015 and 2018 proclamations on homelessness are still unclear from the text of the bill and Senate Standing Committee Report No. 2414. We suggest that this Committee review the exemption and explain the exemption's purpose and desired effect in its standing committee report to provide evidence of the legislative intent.

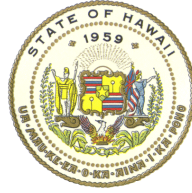
In addition, in section 2, on page 3, lines 6-11, and paragraph (18), on page 5, line 15, to page 6, line 3, the bill states that "[a]ll low-income rentals, tiny home villages, or kauhale developed on state land pursuant to the governor's 2015 or 2018 emergency proclamations on homelessness . . . shall be exempt . . . for the duration of the underlying state lease . . ." from specified civil and criminal statutes as follows:

Sections 601-1.5, 708-817, 708-818, 708-820, 708-830.5, and 708-840, Hawaii Revised Statutes, to the extent that these sections contain provisions for the suspension, tolling, extension, or granting of relief from deadlines, time schedules, or filing requirements in civil, criminal, or administrative matters before the courts of the State or to the extent that these sections contain provisions for criminal penalties that are automatically heightened by reason of any declared disaster or emergency.

Paragraph (18) attempts to exempt projects from any identified timelines, tolling, filing requirements, and other deadlines in civil, criminal, or administrative court matters, and any penalties that are automatically increased due to a declared disaster or emergency. The listed criminal offenses include section 708-817, HRS, burglary of a dwelling during an emergency period, section 708-818, HRS, burglary of a building during an emergency period, section 708-820, HRS, criminal property damage in the first degree, section 708-830.5, HRS, theft in the first degree, and section 708-840, HRS, robbery in the first degree. The Governor's 2015 emergency proclamation on homelessness expired on October 19, 2016, and the Governor's 2018 emergency proclamation on homelessness expired on February 14, 2020; therefore, the purpose and desired effect of these exemptions are unclear from the text of the bill. We suggest that the intent and application of paragraph (18) of section 2 be clarified, or that the paragraph be removed from this measure.

Thank you for the opportunity to provide these comments.

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
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ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Wednesday, February 23, 2022
10:05 AM**

State Capitol, Conference Room 211, Via Videoconference

**In consideration of
SENATE BILL 3169, SENATE DRAFT 1
RELATING TO HOMELESSNESS**

Senate Bill 3169, Senate Draft 1 proposes to waive a variety of statutes, including Chapters 46, 205, 205A, and 343, Hawaii Revised Statutes (HRS) for low-income rentals, tiny home villages, or kauhale built on state lands. **The Department of Land and Natural Resources (Department) opposes this bill as the exemptions related to land use are too broad, erase environmental protections and close off opportunities for public comment.**

SECTION 2 of this bill proposes to exempt projects developed on state land pursuant the Governor's 2015 or 2018 emergency proclamations on homeless from a list of 18 provisions in the HRS. The Department is unclear as to why the exemption of land use laws are necessary, as arguably, no further building is allowed under the umbrella of the governor's emergency proclamations. There is no language specifying that expansion of a project's current footprint is allowed. The Department supports compliance with all applicable land use laws.

The Department requests removal of the waivers for Chapters 46, 205, 205A and 343, HRS.

Effect of waiving Chapter 46. The waiver of Chapter 46 is much too broad as this Chapter delegates authority to the Counties. In particular, the department is concerned that the waiver may conflict with the County's ability to regulate development in the floodplain in accordance with the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). If the County does not have the ability to regulate development in the floodplain, then the State of Hawaii may lose its ability to participate in the National Flood Insurance Program. The Department also notes that Section 46-4, HRS, County Zoning is necessary to ensure appropriate land uses. In particular, the Department has concerns with

waiving Section 46-4(3), HRS, zoning power over the areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures and the location of buildings may be restricted. Waiving county zoning regulations in these areas could affect downstream or neighboring populations and threaten the State's ability to participate in the NFIP.

Chapter 205 Land Use Commission and 205A Coastal Zone Management (CZM) Program.

The Department supports after-the fact compliance with these two laws, if applicable. If not applicable, the waivers should be removed. The department will rely on the Land Use Commission to comment on adverse effect of waiving Chapter 205, HRS, and the State Planning Office to comment on the adverse effects of waivers of these two laws. The Department notes that the CZM Program is important for preserving open space and reducing hazards to life and property from coastal hazards. As with all of the proposed land use waivers, failing to review the effects of these types of projects could have adverse effects to the public and to other land uses.

Chapter 343 serves 2 major purposes. First it addresses environmental effects of a project on Hawaii's unique and fragile environment. The Department does not support a waiver because the state has daily evidence of human effects on the environment to the detriment of the larger population. Coral loss due to polluted run-off, as well as climate change is a constant problem. The importance of monitoring water quality has been made very clear by the Red Hill leak. Avian malaria is threatening extinction for almost all of our native birds. Waiving Chapter 343, HRS, avoids looking at possible effects to these resources and addressing mitigation of any effects.

The second purpose of Chapter 343, HRS, is to allow the public an opportunity to comment on projects that may affect them. Waiving Chapter 343, HRS, closes this avenue for public comment on projects that the public should have an opportunity to weigh in on, since they are often built on public lands that other people, in addition to the homeless may use. While the Department understands the need for low income and alternate housing and the added costs incurred by complying with environmental regulations, we feel those costs are well worth it to ensure the protection of Hawaii's unique and fragile environment for the entire population of our state.

The Department thanks the Legislature for removing the waiver on Chapter 6E HRS.

Thank you for the opportunity to comment on this measure.

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Ways and Means

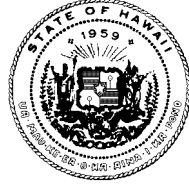
From: Cheryl Kakazu Park, Director

Date: February 23, 2022, 10:05 a.m.
State Capitol, Conference Room 211 and Via Videoconference

Re: Testimony on S.B. No. 3169, S.D. 1
Relating to Homelessness

Thank you for the opportunity to submit testimony on this bill, which would exempt from various state laws low-income rentals, tiny home villages, or kauhale built on state land pursuant to the Governor's 2015 and 2018 proclamations on homelessness. The Office of Information Practices (OIP) testified previously to express concerns about the proposed exemption from chapter 92, HRS, "to the extent that any notice requirements or any other provisions of chapter 92 may delay the expeditious action, decision, or approval of any agency[.]" That exemption was removed from the S.D. 1 version of the bill so OIP has no further concerns regarding the bill.

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 22, 2022

TO: The Honorable Senator Donovan M. Dela Cruz, Chair
Senate Committee on Ways & Means

FROM: Cathy Betts, Director

SUBJECT: SB 3169 SD1 – RELATING TO HOMELESSNESS.

HEARING: February 23, 2022, at 10:05 a.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) provides comments.

PURPOSE: The purpose of this measure is to ensure the continued existence of the Low-Income Tiny Home Projects developed pursuant to the Governor's 2015 or 2018 Emergency Proclamations related to homelessness or their supplemental proclamations, by exempting the projects from certain laws for the duration of the underlying state land leases. Establishes the Low-Income Tiny Home Village Pilot Program to provide shelter and certain services to low-income and homeless individuals. Effective 12/31/2050. (SD1). The SD1 amended the measure by:

- (1) Clarifying that the final supplemental proclamation to the Governor's 2018 Emergency Proclamation related to homeless expired on February 14, 2020;
- (2) Deleting the following statutes from the list of exemptions in section 3 of the measure granted to existing low-income rentals, tiny home villages, or kauhale developed on state land pursuant to the Governor's 2015 or 2018 Emergency Proclamations on homelessness or the supplemental proclamations:
 - (A) Chapter 6E, Hawaii Revised Statutes, governing historic preservation;
 - (B) Section 37-41, Hawaii Revised Statutes, governing appropriations to revert to state treasury;

- (C) Section 37-74(d), Hawaii Revised Statutes, governing the executive budget program execution;
- (D) Section 40-66, Hawaii Revised Statutes, governing the lapsing of appropriations;
- (E) Chapter 92, Hawaii Revised Statutes, governing public agency meetings and records;
- (F) Chapter 171, Hawaii Revised Statutes, public lands; and
- (G) Chapter 346, Hawaii Revised Statutes, governing social services;
- (3) the requirement that the Hawaii Housing Finance and Development Corporation develop and implement the Low-Income Tiny Home Village Pilot program;
- (4) Inserting an effective date of December 31, 2050, to encourage further discussion; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

The Department appreciates the SD1 amendments. However, DHS recommends that the Legislature evaluate the impact of the exemptions for entire chapters of law and for the specific sections listed as there may be unintended consequences and as written does not give clear notice of what the law will be if the measure passes as drafted.

Without a declared emergency, it is unclear how to interpret what some of the exemptions mean. For example, Section 2 (18) exempts the program from section 708-817, HRS, regarding burglary of a dwelling during an emergency period. By exempting the pilot from this section, does the Legislature intend that a person committing a burglary can only be charged for the burglary and cannot be charged with burglary during the emergency period? This would be the case without the exemption when there is no emergency; there does not appear to be a reason for the exemption. However, if an emergency is declared when this proposed law is in effect, there would not be a violation of section 708-817, HRS, as this proposed law would exempt the individual from being charged with burglary during an emergency period. The Department does not think this is the Legislature's intent, and DHS suggests targeting the exemptions that are needed.

Communities on the mainland are wrestling with the issue of how to incorporate tiny homes that were quickly erected to address the impacts of COVID-19 as more viable housing options for individuals experiencing homelessness. However, developing needed shelter or low-income housing should meet the same environmental, labor, and building standards as

housing for higher-income residents, especially where public funds are used and if there's any intent to seek federal funds in the future. Rather than exempting these programs from general principles of existing law, guidelines should be developed, and investments made to mitigate hazards or other building code issues and bring structures erected during emergencies into compliance.

Of note, the tiny homes should not be considered permanent housing for children with families; rather, tiny homes should be dwelling options for single adults or couples without young children. Before the pandemic, studies of overcrowded households – where there are more people than rooms, show that children who live in overcrowded homes, amongst other things, lag behind peers in education, and parents report their children to have poorer health.

If the measure passes, DHS will work with the Hawaii Housing Finance and Development Corporation and the counties to develop a tiny homes pilot program. In addition, DHS will need funds to hire a consultant regarding property development and financing, and DHS will provide updated resource needs as the measure continues.

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



EXECUTIVE CHAMBERS
HONOLULU

February 23, 2022

TO: The Honorable Senator Donovan M. Dela Cruz, Chair
Senate Committee on Ways and Means

FROM: Scott Morishige, MSW, Governor's Coordinator on Homelessness

SUBJECT: **SB 3169 SD1 – RELATING TO HOMELESSNESS.**

Hearing: Wednesday, February 23, 2022, 10:05 a.m.
VIA VIDEO CONFERENCE

POSITION: The Governor's Coordinator on Homelessness appreciates the intent of this bill, requests clarification regarding section 2, and respectfully offers comments.

If this measure proceeds, the Coordinator requests that any appropriation not replace or reduce priorities identified in the executive budget.

PURPOSE: The purpose of the bill is to establish the low-income rental tiny home village pilot program to provide shelter and certain services to low-income and homeless individuals. The bill also ensures that existing low-income tiny home projects created during periods covered by the Governor's emergency proclamation shall continue as long as the underlying state land lease continues.

The Coordinator appreciates the amendments by the Senate Committees on Human Services and Water and Land to clarify that the final supplemental proclamation to the Governor's 2018 Emergency Proclamation related to homelessness expired on February 14, 2020. The Coordinator also appreciates the Committees deleting some statutes from the list of exemptions in section 2 granted to existing low-income rentals, tiny home villages, or Kauhale developed on state land.

While some exemptions from the Hawaii Revised Statutes (HRS) were removed from the prior draft, the bill still includes exemptions from numerous HRS chapters regarding the

counties, collective bargaining, concessions in government buildings, procurement, wages and working conditions, public works, use of government vehicles, land use, coastal zone management, and environmental impact statements. The bill also exempts existing low-income rentals, tiny home villages, or Kauhale from the entirety of chapter 206E, HRS, relating to the Hawaii Community Development Authority (HDCA). As currently drafted, the exemptions in section 2 apply only to projects developed on State land and exemptions are “for the duration of the underlying state lease.” The Coordinator notes that some projects that utilized the 2015 and 2018 emergency proclamations – such as Kahauiki Village - are not leased directly from the State but are sited on land transferred from the State to a county through Executive Order and leased to a provider directly by the county. If this measure proceeds, the Coordinator respectfully requests clarification on whether exemptions in Section 2 apply only to projects on lands leased by the State, or if they also apply to lands transferred from the State to the counties through Executive Order.

The Coordinator further requests clarification if the exemptions in section 2 are intended to support further development or expansion of existing projects developed under the Governor’s previous 2015 and 2018 emergency proclamations related to homelessness. The Coordinator is concerned about unintended consequences resulting from broad exemptions. If the intent is to scale existing projects on state lands, the Legislature may consider more narrowly tailoring the list of exemptions and inserting language that clarifies why specific exemptions are required.

Notably, section 2 appears to apply only to projects that provide permanent housing (e.g., rentals, tiny home villages, or Kauhale), and would not apply to emergency shelters that were developed under the prior Governor’s emergency proclamations, such as the Keolahou Emergency Shelter on Hawaii island or the Family Assessment Center on Oahu.

Regarding section 3 of the bill, the Coordinator acknowledges the need for additional low-income housing, including communal design developments to reduce construction costs. However, as currently drafted, the bill does not provide an appropriation to support establishing the low-income rental tiny home village pilot program and would establish an unfunded mandate for DHS. It is unclear if the intention of Section 3 is to facilitate planning for

the proposed pilot program or is to implement the program and construction of the proposed low-income tiny home village. If this bill proceeds, the Legislature may consider appropriating a sufficient level of funds for planning and implementation.

Alternatively, the Legislature may also consider support to continue the similar [Ohana Zones pilot program](#), which provided flexible funding for the State and counties to develop innovative programs reflecting the needs of specific communities statewide, including areas of Hawaii island. The Coordinator notes that [SB3168 SD1](#) and [HB2512 HD1](#) both appropriate funds to expand the Ohana Zones pilot and extend the sunset date for the program. Examples of Ohana Zones projects include the [Homeless Outreach and Navigation for Unsheltered \(HONU\)](#) program on Oahu and permanent housing projects such as [Kamaoku Kauhale](#), [Huliau](#), [Kealaula at Pua Loke](#), [Kumuwai](#), and [Hale Maluhia](#). The [HICH annual legislative report](#)¹ provides a detailed overview and evaluation of the Ohana Zones pilot program.

Thank you for the opportunity to testify on this measure.

¹ Report available at: <https://homelessness.hawaii.gov/wp-content/uploads/2021/12/HICH-Report-to-2022-Legislature-FINAL.pdf>



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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
WAYS AND MEANS
February 23, 2022, 10:05 AM

SENATE BILL 3169
RELATING TO HOMELESSNESS

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee, thank you for the opportunity to submit testimony on SB3169 SD1. The State Procurement Office (SPO) opposes exempting Chapter 103D, Hawaii Revised Statute, in SECTION 2, page 4, lines 14 to 17, of the bill, which state as follows:

- “(8) Chapter 103D, Hawaii Revised Statutes, Hawaii public procurement code;
- (9) Chapter 103F, Hawaii Revised Statutes, purchases of health and human services;”

The SPO objects to the procurement exemption and testifies that **all low-income rentals, tiny home villages, or kauhale built on state land, and any purchases of health and human services** should be conducted within the procurement code, as applicable, and should not be exempt for the duration of the underlying lease.

Chapter 103D, Hawaii Revised Statutes, Hawaii Public Procurement Code (Code), as well as Chapter 103F, Hawaii Revised Statutes, Purchases of Health and Human Services, are the State's single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure, and transparency in the procurement and contracting process vital to good government.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. To legislate that any one entity should be exempt from compliance with both HRS chapter 103D and 103F conveys a sense of disproportionate equality in the law's application.

Exemptions to the code mean that all procurements made with taxpayer monies will not have the same oversight, accountability and transparency requirements mandated by those

procurements processes provided in the code. It means that there is no requirement for due diligence, proper planning or consideration of protections for the state in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, Agencies can choose whether to compete any procurement or go directly to one contractor. As a result, leveraging economies of scale and cost savings efficiencies found in the consistent application of the procurement code are lost. It also means Agencies are not required to adhere to the code's procurement integrity laws.

The National Association of State Procurement Officials state: "Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments."

When public bodies, are removed from the state's procurement code it results in the harm described above. As these entities create their own procurement rules, businesses are forced to track their various practices. Moreover, a public body often can no longer achieve the benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

Thank you.

PARTNERS IN CARE

Oahu's Continuum of Care

Our mission is to eliminate homelessness through open and inclusive participation and the coordination of integrated responses.

TESTIMONY IN SUPPORT ON SB 3169 SD1 RELATING TO HOMELESSNESS

TO: Senate Committee on Ways and Means
FROM: Partners In Care (PIC)
Hearing: Wednesday, February 23rd, 2022, 10:05am
Position: **SUPPORT**

Chair Dela Cruz and Members of the Senate Committee on Ways and Means :

Partners In Care, Oahu's Continuum of Care, stands in support of **SB 3169 SD1 RELATING TO HOMELESSNESS**. A Kauhale is a traditional, cultural model of housing that creates a community through the clustering of homes. Over the last several years, the concept of tiny homes that are built with community in mind for those experiencing homelessness have been built across the country. There are several examples of the Kauhale already in place here in Hawaii. These small homes require minimal land to accommodate many individuals and build upon the skills of those living in the community.

The Hawaii community has a strong sense of family and community yet we have one of the highest rates of homelessness in the country. These villages will enable many to be able to pay for a small space they can call their own.

While we support this measure and the concept of Kauhale, we suggest that we continue to work on details pertaining to permitting, land and rules and regulations from local, state and federal partners. While it is paramount that we build affordable housing for our neighbors throughout Hawaii, we do not want to build to the detriment to our citizens or environment. We should be working towards improving our permitting and planning process so that there is little to no need for exemptions. We should also encourage environment assessments that are accomplished in a timely manner. We also wish to draw attention to the need for ongoing services at these sites to further assist those coming out of homelessness so that they are successful in pursuing their goals. PIC would also like to see the expedited process cited in this measure be expanded to include properties that are not owned by the State. We have an opportunity to work with other land owners to make use of privately owned properties and those owned by other government partners to create more housing for our neighbors. Partners In Care continues to work with HUD and other stakeholders to recognize the importance of the many different ways that Hawaii can assist those experiencing homelessness.

Thank you for the opportunity to testifying on this measure. Please do not hesitate to contact us if you have any questions.

Aloha

SB-3169-SD-1

Submitted on: 2/21/2022 10:19:22 AM

Testimony for WAM on 2/23/2022 10:05:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mike Goodman	Individual	Support	No

Comments:

To the Chair, Vice Chair, and Members of the Committee on Ways and Means; Mahalo for the opportunity to testify in strong support of SB3169, and tiny homes in general, because this is the only foreseeable way to end the homeless crisis.

Obviously, we can't end homelessness until everyone has a home;

A home is a place that belongs to the person living in it; Where they have all the freedoms any of us reasonably expect to have when we're in our homes. It's a place where a person can "exclude others" lock their door, and feel safe.

A home does not have to be an apartment or a full-size house. A home can be tiny; A home can even be a yurt. But a shelter can't be a home;

Ending homelessness means achieving "functional zero", where everyone has a decent place to live, and newly homeless are housed in thirty-days or less. When we reach functional zero, homelessness will no longer be a "crisis". Having a ready inventory of eight thousand units, with appropriate supportive services, will bring us to functional zero in Hawai'i.

We're never been able to reach functional zero with apartments, because they're too expensive, at a minimum of \$300,000 per unit to construct. Rental subsidies run at least \$1000 a month, there's a shortage of inventory, and many landlords won't take homeless tenants. Conversely, tiny homes can cost \$25,000 or less.