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GOVERNOR



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STATE OF HAWAII

DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
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Statement of
Chad K. Taniguchi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON HOUSING

February 4, 2009 9:00 a.m.
Room 325, Hawaii State Capitol

In consideration of
H.B. 1440
RELATING TO PUBLIC HOUSING

The Hawaii Public Housing Authority (HPHA) supports the intent of H.B. 1440, which would streamline the process of evicting residents of public housing units who do not pay rent when due, or otherwise violate the rental agreement which is a condition of living in public housing.

The current eviction process is lengthy and complex, and can be manipulated to delay the eviction of residents who are not paying or whose behavior is disruptive or dangerous to other residents. H.B. 1440 would continue to provide due process and a fair hearing, while eliminating redundant notification and waiting period requirements.

There are currently over 9000 people on the waiting list for public housing. It is imperative that the limited number of public housing units be available to needy citizens, who will meet their responsibilities by complying with necessary community rules and paying rent when due. Under current procedures it can be many months between the time a violation occurs and the time when the unit becomes available to a more responsible tenant; under this bill that delay would be significantly reduced.

HPHA does not support the provision of H.B. 1440 which would replace the Eviction Board with a single Hearings Officer. The Evictions Board acts as an independent decision maker in what can be a contentious and emotional hearing process, and provides assurance to the residents and community that all persons receive a fair and impartial hearing. We ask that the language changing the decision maker from an Evictions Board to a Hearings Officer be deleted.

The Office of the Attorney General informs us that a modification to the structure of the bill is necessary. Section 1 modifying §356D-92(b) has a technical problem and the attached language is respectfully submitted in substitution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 356D-92, Hawaii Revised Statutes, is amended to read as follows:

"§356D-92. Termination and eviction. (a) Except as otherwise provided, the authority may terminate any lease, rental agreement, permit, or license covering the use and occupation of any dwelling unit or other premises located within a public housing project and evict from any premises any tenant, licensee, or other occupant for any of the following reasons:

- (1) Failure to pay rent when due;
- (2) Violation of any of the provisions of a lease, rental agreement, permit, or license;
- (3) Violation of any of the rules of the authority;
- (4) Failure to maintain the dwelling unit in a clean, sanitary, and habitable condition; or
- (5) The existence of any other circumstances giving rise to an immediate right to possession by the authority.

(b) When any tenant has been delinquent in payment of rent, the authority, either directly or through its managing agent, shall provide the tenant with a written notice [~~no later than forty-five~~] at least ten business days from the date of delinquency that shall inform the tenant of the delinquency [~~and schedule a meeting between the tenant and the authority or its agent.~~ ~~The written notice shall:~~

- ~~(1) Inform the tenant that continued delinquency shall result in the tenant's eviction;~~
- ~~(2) Inform the tenant of the tenant's right to apply for an interim adjustment in rent;~~

- ~~(3) Explain to the tenant the steps of the grievance and eviction processes and how the processes protect the tenant;~~
- ~~(4) Provide the tenant with a sample letter for demanding a grievance hearing;~~
- ~~(5) Set forth the location, date, and time, which shall be no earlier than fourteen days from the date of the written notice, at which the tenant may meet with the authority or its agent to discuss the delinquency in rent; and~~
- ~~(6) Inform the tenant that the tenant shall either attend the meeting or, if applicable, contact the authority or the authority's agent before the meeting time to reschedule the meeting.~~

~~(c) At the meeting described in subsection (b), the authority or its agent shall:~~

- ~~(1) Inquire into the cause of the tenant's delinquency and offer suggestions, if any, that the authority may feel appropriate to address the causes of delinquency;~~
- ~~(2) Consider whether a reasonable payment plan is appropriate for the tenant's situation and, if appropriate, offer a payment plan to the tenant; and~~
- ~~(3) Inform the tenant of and explain the issues as required under subsection (b)(1), (2), and (3).~~

~~(d) The authority shall develop a checklist outlining all of the requirements listed in subsection (c). The authority or its agent and the tenant shall complete, sign, and date the checklist to memorialize the meeting.~~

~~(c) If the tenant fails to attend or reschedule the meeting provided for in subsection (b), the authority shall provide the tenant with a second written notice. The notice shall inform the tenant that:~~

~~(1) The authority shall proceed to terminate the tenant's tenancy because of the tenant's outstanding rent delinquency and the tenant's failure to respond to the authority's written notice issued pursuant to subsection (b);~~

~~(2) The tenant has ten business days from receipt of the second written notice to request a grievance hearing; and~~

~~(3) If the tenant fails to request a grievance hearing within ten business days, the authority has the right to proceed with the eviction hearing pursuant to section 356D-93.~~

~~(f) If the tenant meets with the authority as provided for in subsection (b), the authority shall decide, based upon the facts discussed at the meeting, what action is appropriate to address the tenant's case. The authority shall notify the tenant of its decision in writing. If the authority decides to proceed with an action to terminate the tenancy, the authority shall further inform the tenant in the same written notice] and provide that:~~

~~(1) The tenant has ten business days from receipt of this notice to request a grievance hearing; and~~

~~(2) If the tenant fails to request a grievance hearing within ten business days, the authority has the right to proceed with the eviction hearing pursuant to section 356D-93."~~

TESTIMONY OPPOSING HB1440 - RELATING TO PUBLIC HOUSING

February 4, 2009 at 9:00 a.m.

The Legal Aid Society of Hawaii hereby provides testimony to the House Committee on Housing opposing HB1440 – Relating to Public Housing..

The Legal Aid Society of Hawaii provides free legal services to the low-income population of the State of Hawaii. In addition to providing services to clients who currently reside in public housing, we also assist individuals who are on the waiting list to gain access to public housing. In 2008, we received over three hundred calls requesting assistance on public housing matters and represented approximately thirty or 10% of these callers in administrative and/or court hearings.

We agree that it is not in the interest of public housing residents or families on the waiting list to have a lengthy eviction process in public housing. However, contrary to the claims made by the proponents of the bill, HB1440 will not benefit families on the waiting list for public housing and will not expedite the eviction process as claimed. For the reasons detailed below, the Legal Aid Society of Hawaii opposes HB1440.

Background

In the 2002 Legislative Session, the Legislature considered Senate Bill No. 331. The bill's purpose was "to streamline the administrative eviction process without impairing the tenant's due process rights." Prior to passage of Senate Bill 331, the eviction process provided an opportunity for three administrative hearings before a tenant was evicted: a grievance hearing; an eviction hearing; and an administrative appeal. If the tenant was unsuccessful at any of the previous stages, he or she could then appeal to the Circuit Court with a chapter 91 appeal. Under this lengthy process, it had taken up to eighteen months before the Housing and Community Development Corporation of Hawaii (HCDCH) now known as the Hawai'i Public Housing Authority (HPHA) could evict a tenant from public housing. See S.B. NO. 331, S.D. 2, H.D. 2, C.D. 1. Testimony also showed at that time that HCDCH's tenant accounts receivable at the time was approximately \$1.2 million, attributable to the accrual of rent during the lengthy eviction process. See STAND. COM. REP. NO. 2091.

The same considerations are no less prevalent today, especially because nothing has occurred since the time the report was issued that would justify the repeal of the current statute; a statute which was supported by HCDCH, resident groups, and other members of the community and was refined by over a year's worth of thought, discussion, and debate in the Legislature.

The Current Statute is Not Responsible for the Delays in the Eviction Process

There is nothing in the current statute that requires or even encourages a one-year eviction process. HPHA has not pointed to anything in the statute that is responsible for the delays. Admittedly, the statute contains notice requirements and timelines that must be followed, but many of the timelines in the statute are imposed by federal requirements. Furthermore, an eviction done properly under the statute could be easily done within a three month period if the authority timely schedules all meetings.

The current statute meets federal guidelines which protect the due process rights of tenants. These due process rights are guaranteed through the notice procedures and the administrative grievance process. The

proposed statute violates these due process rights by eliminating the informal hearing which is mandated by federal law.

The following is a general outline of the federally mandated grievance process:

- Federal law states that a tenant must have at least 14 business days written notice before an informal hearing can be held. Changing this period to 10 days is a violation of federal statute
- The written notice must explain the tenant's due process rights and must explain the eviction process. The current statute Section 1 (b) meets the notice requirements mandated by the federal government.
- Once the tenant receives written notice an informal hearing is scheduled. Federal law does not allow a local PHA to omit the informal hearing stage from the grievance process. However, if the tenant fails to attend the informal hearing, he has waived this hearing.
- The authority must provide the tenant with a written decision from the informal hearing. Once this decision is received, the tenant has a "reasonable time" (10-14 days) to file a grievance. Failure to file a grievance is deemed a waiver. Once the grievance is requested, the authority is to schedule a formal hearing.
- The formal grievance hearing can be held before a hearings officer rather than an eviction board. Once the formal hearing is held, the tenant has the opportunity to pursue a Chapter 91 appeal.

The current statute changes the formal hearing. Currently, there is an eviction board and an attorney representing the authority presents the case. This is the first time an attorney is involved, and can make a determination as to the legality of the authority's case.

The current statute meets federal law, the proposed changes in HB 1440 will violate the federal statute.

Any delays appear not to rest in the statute itself, but within the administration of HPHA. There is nothing in the statute that prevents HPHA from promptly scheduling and providing hearings.

Conclusion

Clearly there are severe problems with a public housing eviction process that takes an entire year to evict a tenant. However, it is equally clear that the problem is not attributable to the statute that currently governs evictions. HPHA may claim that the statute is responsible for the lengthy eviction process. However, the only thing that will prevent public housing evictions from proceeding in a timely manner is HPHA's internal procedures. Nothing in the statute encourages a lengthy eviction process. To expedite the grievance process HPHA needs to make internal changes – repealing the statute is not the solution. Not only will it not reduce the length of the eviction process, but also HB 1440 needlessly repeals important provisions that promote the prompt resolution of problems, the curing of misunderstandings and mistakes that need not lead to eviction, and that inform families in public housing of their rights. For these reasons, we respectfully request that the Committee oppose HB 1440.

Thank you for this opportunity to testify.

Sincerely,

Sheila Lippolt
Supervising Attorney
Housing Unit



BY EMAIL: HSGtestimony@capitol.hawaii.gov

Committee: Committee on Housing
Hearing Date/Time: Wednesday, February 4, 2009, 9:00 a.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 1440, Relating to Public Housing

Dear Chair Cabanilla and Members of the Committee on Housing:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 1440, which seeks to eliminate most procedural requirements preliminary to hearing for eviction of tenants from public housing.

Eliminating most of the procedures required for evictions will likely result in the violation of tenants’ constitutional due process rights and the eviction of innocent individuals. The current eviction process appropriately balances public housing tenants’ constitutional due process rights with the needs of the Hawaii Public Housing Authority and should be maintained.

Further, we should not be considering ways to make it easier to evict public housing tenants, some of our most vulnerable citizens, in this time of high and rising unemployment. Evicting these already low-income individuals will stretch our homeless resources to the breaking point. Hawaii would be better served by providing assistance and due process to individuals threatened with eviction.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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