

JAN 24 2018

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# A BILL FOR AN ACT

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RELATING TO THE HAWAII PUBLIC HOUSING AUTHORITY.

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

1       SECTION 1. Chapter 356D, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4                   Part     .   STATE LOW-INCOME HOUSING; EVICTIONS

5       "§356D-       Definitions. As used in this part:

6       "Party" means each person or agency named or admitted as a  
7 party or properly seeking and entitled as of right to be  
8 admitted as a party in any court or agency proceeding.

9       "State low-income housing project" means any state family  
10 or state elder or elderly low-income housing project or projects  
11 owned, managed, administered, or operated by the authority as  
12 codified in sections 356D-44 and 356D-71.

13       "Tenant" means any person occupying a dwelling  
14 accommodation or living quarters in any state low-income housing  
15 project, under or by virtue of any tenancy, lease, or rental  
16 agreement under or from the authority.

17       §356D-       Termination and eviction. (a) Except as  
18 otherwise provided, the authority may terminate any lease,

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1 rental agreement, permit, or license covering the use and  
2 occupation of any dwelling unit or other premises located within  
3 a state low-income housing project and evict from any premises  
4 any tenant, licensee, or other occupant for any of the following  
5 reasons:

6 (1) Failure to pay rent when due;

7 (2) Violation of any of the provisions of a lease, rental  
8 agreement, permit, or license;

9 (3) Violation of any of the rules of the authority;

10 (4) Failure to maintain the dwelling unit in a clean,  
11 sanitary, and habitable condition;

12 (5) Upon a third violation of section 356D-6.5; provided  
13 that a violation of any of these terms by a  
14 nonresident, a guest who is visiting a resident, or by  
15 any member of the resident's household shall be deemed  
16 a violation by the resident; or

17 (6) The existence of any other circumstances giving rise  
18 to an immediate right to possession by the authority.

19 (b) When any lease, rental agreement, permit, or license  
20 is subject to termination pursuant to subsection (a), the  
21 authority, either directly or through its managing agent, shall  
22 provide the tenant with a written notice that shall inform the

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1 tenant of any violation or failure and, if a delinquency, the  
2 amount of that delinquency.

3       **§356D- Hearings.** (a) Where the authority proposes to  
4 terminate a lease or rental agreement and evict a tenant under  
5 section 356D- , a hearing shall be held to determine whether  
6 cause exists for the action. The authority shall give written  
7 notice to the person concerned specifying the reason for which  
8 the eviction is proposed and fixing the date and place of  
9 hearing. The written notice shall further inform the tenant of  
10 the right to inspect and copy the tenant file at the tenant's  
11 expense before the hearing is held. The notice shall be given  
12 at least five days before the date set for the hearing. At the  
13 hearing, before final action is taken, the person concerned  
14 shall be entitled to be heard in person or through counsel, and  
15 shall be accorded a full and fair hearing in accordance with the  
16 requirements of a contested case hearing provided for under  
17 sections 91-9 and 91-10 to 91-13. This full and fair hearing  
18 shall be deemed to be a contested case hearing before the  
19 authority that is required pursuant to chapter 91.

20       (b) Hearings shall be conducted by an eviction board  
21 appointed by the authority. The eviction board shall consist of  
22 not fewer than one person, and no more than three persons, of

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1 which one member shall be a tenant. If feasible, the eviction  
2 board may conduct hearings using video conferencing technology;  
3 provided that these hearings shall be conducted pursuant to  
4 chapter 91. The findings, conclusions, decision, and order of  
5 the eviction board shall be final unless an appeal is taken  
6 pursuant to section 91-14.

7 (c) The eviction board shall have the same powers  
8 respecting administering oaths, compelling the attendance of  
9 witnesses and the production of documentary evidence, and  
10 examining witnesses, as are possessed by circuit courts. In  
11 case of disobedience by any person of any order of the eviction  
12 board, or of any subpoena issued by the eviction board, or the  
13 refusal of any witness to testify to any matter regarding which  
14 the witness may lawfully be questioned, any circuit judge, on  
15 application by the eviction board, may compel compliance with  
16 such order or subpoena, or compel testimony.

17 §356D- Eviction. (a) If it is proven to the  
18 satisfaction of the eviction board that there is cause to  
19 terminate a lease, rental agreement, permit, or license and  
20 evict the tenant, the authority shall provide the tenant with a  
21 written notice of the authority's decision to terminate the  
22 tenancy. The notice shall inform the tenant that a writ of

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1 possession may be issued by the authority within ten business  
2 days. The notice shall also inform the tenant whether the  
3 grounds for eviction are considered curable and, if so, what the  
4 tenant must do to remedy the grounds, by when it must be done,  
5 and what the tenant must do to document for the authority that  
6 the grounds have been remedied.

7 (b) When the grounds for termination of the tenancy may be  
8 cured by the tenant, the tenant shall have ten business days  
9 from receipt of the notice provided for in subsection (a) to  
10 cure the grounds. If the grounds are cured within the ten-day  
11 period, no writ of possession may be issued. If the grounds are  
12 not cured within the ten-day period, the authority may issue a  
13 writ of possession forthwith.

14 (c) The authority may adopt rules pursuant to chapter 91  
15 to define curable and noncurable grounds for eviction. The  
16 authority may consider a tenant's history in determining  
17 noncurable grounds for eviction. A tenant's history may include  
18 chronic or consistent delinquency, or repeated violations of the  
19 terms of the lease, rental agreement, permit, or license.

20 (d) Enforcement of the order by a writ of possession shall  
21 be effected either by a process server appointed by the  
22 authority, who shall have all of the powers of a police officer

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1 for all action in connection with the enforcement of the order,  
2 or by a sheriff or any other law enforcement officer of the  
3 State or any county, whose duty it shall be to carry out the  
4 order. The person enforcing the order shall remove all persons  
5 from the premises and put the authority in full possession  
6 thereof.

7 (e) Upon eviction, the household goods and personal  
8 effects of the person against whom the order is entered, and  
9 those of any persons using the premises incident to the person's  
10 holding, may be removed from the premises and stored by the  
11 authority. If the action is taken, the authority shall have a  
12 lien on the property so taken for the expenses incurred by it in  
13 moving and storing the same, and the authority is authorized to  
14 sell or otherwise dispose of the property if unclaimed after  
15 thirty days.

16 §356D- Ex parte motion. If a tenant cannot be served  
17 with an order of eviction or writ of possession, and the facts  
18 shall appear by affidavit or declaration to the authority,  
19 service on the tenant may be made according to the special order  
20 of the authority. The order shall require the process server to  
21 affix a certified copy of the order of eviction or writ of

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1 possession in a conspicuous place upon the premises such as the  
2 door or wall of the dwelling unit.

3       **§356D- Judicial review.** (a) Any person aggrieved by a  
4 final decision and order of the authority or by a preliminary  
5 ruling of the nature that deferral of review pending entry of a  
6 subsequent final decision would deprive the appellant of  
7 adequate relief is entitled to judicial review thereof under  
8 this part.

9       (b) Except as otherwise provided in this section,  
10 proceedings for review shall be instituted in the circuit court  
11 within thirty days after the preliminary ruling or within thirty  
12 days after service of the certified copy of the final decision  
13 and order of the authority pursuant to the rules of court,  
14 except where a statute provides for a direct appeal to the  
15 intermediate appellate court. In such cases, the appeal shall  
16 be treated in the same manner as an appeal from the circuit  
17 court, including payment of the fee prescribed by section 607-5  
18 for filing the notice of appeal. The court in its discretion  
19 may permit other interested persons to intervene.

20       (c) The proceedings for review shall not stay enforcement  
21 of the decision of the authority; provided that the authority or

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1 the reviewing court may order a stay upon such terms as it deems  
2 proper.

3 (d) Within twenty days after the determination of the  
4 contents of the record on appeal in the manner provided by the  
5 rules of court, or within such further time as the court may  
6 allow, the authority shall transmit to the reviewing court the  
7 record of the proceeding under review. The court may require or  
8 permit subsequent corrections or additions to the record when  
9 deemed desirable.

10 (e) If, before the date set for hearing, application is  
11 made to the court for leave to present additional evidence and  
12 the evidence is material and good cause exists for the failure  
13 to present the evidence in the proceeding before the authority,  
14 the court may order the authority to hear the evidence upon the  
15 conditions as the court deems proper. The authority may modify  
16 its findings, decision, and order by reason of the additional  
17 evidence and shall file with the reviewing court, to become a  
18 part of the record, the additional evidence, together with any  
19 modification of its findings or decision.

20 (f) The review shall be conducted by the court without a  
21 jury and shall be confined to the record. In cases of alleged  
22 irregularities in procedure before the authority and not shown



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1 in the record, testimony thereon may be taken in court. The  
2 court, upon request by any party, may hear oral argument and  
3 receive written briefs.

4 (g) Upon review of the record, the court may affirm the  
5 decision of the authority or remand the case with instructions  
6 for further proceedings, or it may reverse or modify the  
7 decision and order if the substantial rights of the petitioners  
8 may have been prejudiced because the administrative findings,  
9 conclusions, decisions, or orders are:

10 (1) In violation of constitutional or statutory  
11 provisions;

12 (2) In excess of the statutory authority or jurisdiction  
13 of the authority;

14 (3) Made upon unlawful procedure;

15 (4) Affected by other error of law;

16 (5) Clearly erroneous in view of the reliable, probative,  
17 and substantial evidence on the whole record; or

18 (6) Arbitrary, capricious, or characterized by abuse of  
19 discretion or clearly unwarranted exercise of  
20 discretion.

21 §356D- Appeals. An aggrieved party may secure a review  
22 of any final judgment of the circuit court under this part by

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1 appeal to the appellate courts, subject to chapter 602. The  
2 appeal shall be taken in the manner provided in the rules of  
3 court.

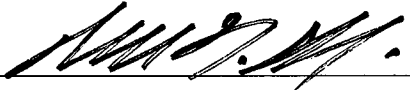
4 §356D- Rules. The authority may adopt rules pursuant to  
5 chapter 91 necessary for the purposes of this part."

6 SECTION 2. This Act shall take effect upon its approval.

7

8

INTRODUCED BY:

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9

BY REQUEST

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**Report Title:**

State Low-income Housing; Housing for Elders; Evictions

**Description:**

Creates an eviction process for the Hawaii Public Housing Authority's state low-income housing and state housing for elders programs.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Hawaii Public Housing Authority

TITLE: A BILL FOR AN ACT RELATING TO THE HAWAII PUBLIC HOUSING AUTHORITY.

PURPOSE: To create an eviction process for the agency's state low-income housing and state housing for elders programs.

MEANS: Add a new part to chapter 356D, Hawaii Revised Statutes.

JUSTIFICATION: With the HPHA's state low-income housing and state housing for elders programs now exempt from chapter 521, Hawaii Revised Statutes, the agency is creating an eviction process that is very similar to its federal low-income public housing program.

This process will streamline the state low-income housing evictions while lessening the caseloads of the Judiciary and the Department of the Attorney General.

Impact on the public: There should be no impact on the public.

Impact on the department and other agencies: Fewer eviction cases for the Department of the Attorney General.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HMS 220; HMS 229.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.