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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce and Consumer Protection  
Tuesday, February 9, 2021  
9:30 a.m.  
Via Videoconference**

**On the following measure:  
S.B. 903, RELATING TO AFFORDABLE HOUSING**

Chair Baker and Members of the Committee:

My name is Catherine Awakuni Colón, and I am the Director of the Department of Commerce and Consumer Affairs (DCCA or Department). The Department respectfully opposes this bill to the extent that it establishes a rent stabilization advisory working group within the DCCA to advise on matters relating to rent stabilization for certain dwelling units.

The purposes of this bill are to: (1) limit monthly rent increases for certain dwelling units to an unspecified percent for the term of the rental agreement or every 12 months, whichever period is longer; (2) prohibit rent increases due to the landlord's negative cash flow resulting from refinancing or purchasing the rental dwelling unit; (3) establish a rent stabilization advisory working group within the DCCA to advise on matters relating to the stabilization of certain dwelling unit rental amounts; and (4) require the Legislative Reference Bureau to conduct a study on actions that other states have taken to incentivize landlords to stabilize rents.

The Department recognizes the importance of stabilizing rent in Hawaii to avoid unreasonable rent increases and to provide a modicum of housing security to tenants; however, a rent stabilization advisory working group would require oversight by a department or an agency well-versed in housing matters, such as housing finance and development issues. These matters are well outside the jurisdiction of the DCCA, which protects consumers through business registration and professional licensure, monitoring the financial solvency of local financial institutions and insurance companies, and investigating complaints of unfair business practices and license violations. Given the tailored mission of the DCCA— to protect consumers and service its business community with respect and fairness to the interests of both—it would be difficult to use existing staff expertise to oversee the working group to, among other things, advise the Legislature, Governor, and county agencies on matters relating to the stabilization of rental amounts for certain dwelling units.

Finally, the Department lacks the requisite knowledge about housing matters to “file a civil action to enforce the provisions of this chapter,” pursuant to page 8, lines 3 to 4 of this bill.

Thank you for the opportunity to testify on this bill.

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February 7, 2021

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair

Re: S.B. No.903- RELATING TO AFFORDABLE HOUSING.

Dear Senators:

I am an attorney who practices in the field of landlord/tenant law, including residential matters. I have over 28 years' experience in the area and my clients manage over 10,000 residential dwellings across the State of Hawaii. I am writing in opposition the above-referenced bill.

Clearly, the intent of this bill is to assist tenants by limiting rent increases when market prices are rising<sup>1</sup>, thereby allowing stable, long-term rental occupancy.

This is a laudable goal. Unfortunately, S.B.903 may have the opposite effect. Since landlords are allowed to set rental rates at market value when tenants move in, a landlord who is intent on raising the rent beyond what the law allows to be charged to their current tenant will have an incentive to end their current tenant's lease. So, instead of a rent increase (which the tenant may have been willing and able to pay), the current tenant is forced to leave.

The language in S.B. 903 that prevents a landlord from raising rents beyond an amount to be determined to account for negative cash flow is problematic. Assuming that the result will be that only modest rent increases will be allowed, this will prevent landlords and tenants from working cooperatively together towards upgrades and repairs. If, for example, a landlord will have an unaffordable negative cash flow if he/she makes necessary repairs to a home, this bill would require the landlord to forego the repairs or cause the existing tenant to move – even if the existing tenant is able and willing to pay the increased rent. As another example, if a tenant wants a landlord to upgrade a kitchen and is willing to pay an increased rent in consideration of the upgrades, this statute would interfere with the landlord and tenant's ability to make such a deal work. Further, it could prevent rehabilitation of housing that is in poor condition if the current owner or a prospective buyer would be prevented from raising rents after improving the property.

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<sup>1</sup> Like everywhere else, rent in Hawaii is driven by supply and demand. Rental housing is a scarce resource, and Hawaii's high rents are a reflection of that reality. If the Legislature wants to make rental housing more affordable, the best solution is to provide government subsidized housing or to allow and incentivize private interests to build more rental units. Once housing becomes less scarce (more available), rents will drop.

Senate Committee on Commerce and Consumer Protection  
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Senator Stanley Chang, Vice Chair  
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This bill may make it more difficult for disabled persons to get landlords to make changes to rented units. Generally, under the laws relating to disabilities, if a tenant wants to make a change to a rental unit to accommodate a disability they will need to pay for the modifications and the cost to remove the modifications at the end of the tenancy. If a tenant becomes disabled during a tenancy and cannot afford to pay for necessary modifications up-front, a landlord may agree to do so in exchange for a higher rent. This legislation would significantly limit the ability of a disabled tenant and landlord to structure such an agreement.

Additionally, this bill appears to be potentially at odds with HRS 127A-30(b) which provides that landlords may pass on additional operating expenses caused by emergencies on to tenants, regardless of the amount of the expense. I will also note that, during the pendency of the pandemic emergency that has been declared by the Governor, all rent increases are prohibited. See, HRS 127A-30(a). There is no indication that the Governor is planning to lift his emergency declaration. So, for the foreseeable future, this bill will not have any effect.

In conclusion, this bill will have significant unintended consequences. The Legislature should study this much more carefully before adopting this bill. Ultimately, this bill, and any rent control program, cannot solve the problem identified in the preamble to the bill - “the scarcity of affordable housing.” If we want people to invest in and feel ownership in their communities the legislature should help Hawaii’s residents buy their own homes or encourage programs to increase the supply of affordable rentals. If the legislature wants investors and landlords to provide more affordable housing for renters, bills like this should be avoided since this legislation will discourage development of affordable housing. The affordable housing scarcity cannot be eliminated by making that business less attractive than it already is.

If the legislature really believes that long-term residency by tenants is desirable, then the legislature should give incentives to landlords and tenants to enter into long-term leases that spell out, in advance, what the rent will be in the future. Perhaps you could consider giving tax incentives or land use exemptions for landlords willing to enter into 5 or 10 year residential leases.

Please let me know if you have any questions.

Very truly yours,

/s/ David Chee

David W.H. Chee

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## Written Comments

### **SB903**

### **RELATING TO AFFORDABLE HOUSING**

Charlotte A. Carter-Yamauchi, Director  
Legislative Reference Bureau

Presented to the Senate Committee on Commerce and Consumer Protection

Tuesday, February 9, 2021, 9:30 a.m.  
Via Video Conference

Chair Baker and Members of the Committee:

I am Charlotte Carter-Yamauchi, Director of the Legislative Reference Bureau (LRB). Thank you for this opportunity to provide written **comments** on S.B. No. 903, Relating to Affordable Housing.

The purpose of this measure is to:

- (1) Limit monthly rent increases for certain dwelling units to an unspecified per cent for the term of the rental agreement or every 12 months, whichever period is longer;
- (2) Prohibit rent increases due to the landlord's negative cash flow resulting from refinancing or purchasing the rental dwelling unit;
- (3) Establish a rent stabilization advisory working group to advise on matters relating to the stabilization of certain dwelling unit rental amounts;
- (4) Require the Legislative Reference Bureau to conduct a study on actions that other states have taken to incentivize landlords to stabilize rents; and
- (5) Require the Bureau to submit a report of its findings and recommendations to the Legislature prior to the convening of the Regular Session of 2022.

The Bureau takes no position on this measure but submits the following comments for your consideration.

With regard to study on actions that other states have taken to incentivize landlords to stabilize rents, the Bureau would like clarification on if the study is limited to longstanding, or permanent rent stabilization efforts, or does the Legislature intend for the study to include recent rent stabilization efforts that may have been implemented to mitigate the adverse economic impacts of the COVID-19 pandemic. If the intent is to include COVID-19 rent stabilization initiatives and longstanding rent stabilization initiatives, then the Bureau may find it difficult to amass all such efforts in the timeframe provided.

If the Committee decides to recommend passage of this measure and desires to keep the Bureau involved, we respectfully request that the measure be amended to specifically clarify the scope of the study.

If the measure is amended to limit the scope of the study to longstanding rent stabilization initiatives, the Bureau believes that the services requested under the measure would be manageable and that the Bureau will be able to provide the services in the time allotted; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting studies, writing or finalizing other reports, drafting legislation, or any combination of these for the Legislature or for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

For these reasons, the Bureau respectfully requests that if this measure is to move on in the legislative process, that amendments be made to the study provisions in section 3 of the bill to provide explicit guidance and parameters on the scope of the required study.

Thank you again for the opportunity to submit written comments.

February 9, 2021

**The Honorable Rosalyn H. Baker, Chair**

Senate Committee on Commerce and Consumer Protection

Via Videoconference

**RE: S.B. 903, Relating to Affordable Housing**

**HEARING: Tuesday, February 9, 2021, at 9:30 a.m.**

Aloha Chair Baker, Vice Chair Chang and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its over 10,000 members. HAR **strongly opposes** Senate Bill 903 which limits monthly rent increases for certain dwelling units to an unspecified per cent for the term of the rental agreement or every 12 months, whichever period is longer. Prohibits rent increases due to the landlord's negative cash flow resulting from refinancing or purchasing the rental dwelling unit. Establishes a rent stabilization advisory working group to advise on matters relating to the stabilization of certain dwelling unit rental amounts. Requires the legislative reference bureau to conduct a study on actions that other states have taken to incentivize landlords to stabilize rents.

HAR believes that rent stabilization does nothing to increase the supply of rental housing and, ultimately, increasing supply is the true long-term solution to Hawaii's rental housing shortage. Legislating price caps will likely lead to unintended consequences reminiscent of what Hawai'i experienced with the gas cap law.

In an efficient market, prices find a level at which both tenants and housing providers are willing to rent to each other. Rent stabilization removes that efficiency from the market. As tenants will want to stay in the units longer, it will decrease the supply of available rental housing stock thereby making prices go up in other non-rent stabilized housing that are exempt from this measure.

Furthermore, rent stabilization does not take into consideration the financial need of a tenant. It thereby would benefit well-to-do renters more than lower-income renters that this bill may be intended to help. To benefit lower-income consumers, rental assistance should be provided directly to the renter rather than tied to the rental unit.

Additionally, this measure prohibits a landlord from increasing rent if a housing provider is experiencing a negative cash flow from refinancing or acquiring the unit. Not every housing provider owns their property out right, and rentals are used as a way to build equity and wealth through investment. The rent is used to help subsidize the mortgage payments, but housing providers can experience negative cash flows, such as from maintenance fees or assessments. By placing restrictions on increasing rent simply from having a negative cash flow could severely hurt these property owners.

Mahalo for the opportunity to testify.

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