

HB 46, HD2

Measure Title: RELATING TO PUBLIC HOUSING.

Report Title: Public Housing; Low-income Housing; Smoking Prohibited

Description: Prohibits smoking in enclosed or partially enclosed common areas of public housing projects and state low-income housing. Requires the Hawaii Public Housing Authority to adopt rules to expand the areas to which the smoking prohibition will apply. Effective January 7, 2059. (HB46 HD2)

Companion: SB908

Package: None

Current Referral: HMS, JDL

Introducer(s): RHOADS

NEIL ABERCROMBIE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
Honolulu, Hawaii 96817

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

SENATE COMMITTEE ON HUMAN SERVICES

March 20, 2012 1:45 P.M.
Room 016, Hawaii State Capitol

In consideration of
House Bill 46, House Draft 2
Relating to Public Housing

Honorable Chair and Members of the Senate Committee on Human Services, thank you for the opportunity to provide you with comments regarding House Bill 46 as amended by House Draft 2, relating to public housing.

The Hawaii Public Housing Authority (HPHA) supports enactment of the measure, which would prohibit smoking in enclosed or partially enclosed common areas of public housing projects, provided it is amended to reflect the contents of House Draft 1. The HPHA agrees that this is a positive bill, with respectable aims to improve the quality of living environment provided to the HPHA's residents. Our agency also appreciates legislative support for the issues involved, particularly with respect to preventing second-hand smoke exposure in environments that are home to children, the disabled, and other vulnerable low income populations.

We do respectfully oppose Section 3 of House Draft 2. We request that the measure be amended to remove this section because the determination of expanded smoking prohibitions, particularly through the adoption of administrative rules, is soundly within the Board's purview and we would respectfully request the Legislature to allow the Board to exercise its governance in the development of such policies. The HPHA would prefer the development of such policy to be undertaken through an agency developed methodology that would allow us to incorporate participation from the Department of Health, our Resident Advisory Board, property management staff, public hearings, and the tenants that would be directly impacted by this measure.

Further, the HPHA feels that adding a time requirement of eighteen months is premature at this time. The agency has already undertaken the process to effectuate smoking prohibitions by approving language within this year's draft PHA Annual Plan. Our agency's draft Fiscal Year 2013 PHA Annual Plan, Section 6.0(a)(1) states:

Controlled Substances Policies: HPHA will evaluate and amend current controlled substances policies at the agency and asset management project (AMP) level. This may include, but not be limited to, studying the potential for non-smoking buildings; developing and implementing a policy to allow the use of medical marijuana pursuant to a lawful prescription; and prohibiting possession of alcohol in common areas.

This PHA Annual Plan has been finalized and approved by the HPHA Board of Directors, and is pending submission to and approval by the U.S. Department of Housing and Urban Development (HUD). Once final approval is received from HUD, our agency will be able to work with stakeholders on revising the relevant administrative documents. This effort would include amending 17-2028, Hawaii Administrative Rules (HAR) with respect to federal public housing, 15-186, HAR, and 15-193, HAR with respect to state public housing, as well as the HPHA Admissions and Continued Occupancy Policy, and lease agreements. The agency will be able to incorporate tenant, HUD, and Attorney General input throughout this process, and ensure compliance with all relevant regulations.

The HPHA appreciates the opportunity to provide the Senate Committee on Human Services with the agency's position regarding H.B. 46, H.D. 2. We respectfully request the Committee to amend this measure and pass it favorably, and we thank you very much for your dedicated support.



To: The Honorable Suzanne Chun-Oakland, Chair
The Honorable Les Ihara, Jr., Vice Chair
Members, Senate Committee on Human Services
From: Deborah Zysman, MPH; Executive Director
Hrg: Senate Committee on Human Services, 3/20/2012, 1:45 pm, Rm 016
Re: **Comments on HB 46 HD2, Relating to Public Housing**

Thank you for the opportunity to offer comment in support of the intent of HB 46 HD2, which prohibits smoking in enclosed or partially enclosed common areas of public housing projects.

The Coalition for a Tobacco Free Hawaii (Coalition) is the only independent organization in Hawaii whose sole mission is to reduce tobacco use through education, policy and advocacy. Our organization is a small nonprofit organization of over 100 member organizations and 2,000 advocates that works to create a healthy Hawaii through comprehensive tobacco prevention and control efforts.

The current version of this bill only prohibits smoking in areas that are already 100% smoke-free under Act 295 and would not increase or improve smoke-free protections for residents or employees in public housing. The bill in its original form made all public housing smoke-free which would guarantee safe housing.

We urge the Hawaii Public Housing Authority (HPHA) to provide smoke-free housing for residents, action they lawfully can take now without legislation. Under new leadership we understand the HPHA will take a serious look at this initiative. We look forward to the opportunity to partner with HPHA on this initiative.

Smoke-free housing is legal and the only way to prevent second-hand smoke exposure.

A 2007 letter from the Honolulu HUD office indicates that “[r]egulating smoking in public housing units or in common areas is a local decision. In addition, according to the Fair Housing and Equal Opportunity Civil Rights analyst, smokers are not a protected class under the Fair Housing Act.” Going smoke-free is lawful and promotes health. Housing units can already adopt their own rules to prohibit smoking.

Secondhand smoke is dangerous; the **U.S. Surgeon General in 2010 notes that any level of exposure to secondhand smoke is dangerous and can be harmful.** The International Agency for Research on Cancer and the U.S. Environmental Protection Agency both note that environmental tobacco smoke (or secondhand smoke) is carcinogenic to humans. Secondhand smoke contains 7,000 identifiable chemicals, 69 of which are known or probable carcinogens.

The Coalition receives calls from residents who reside in public housing units and who have asthma and other health issues affected by secondhand smoke exposure. There is little assistance the Coalition can provide them. It is clear, however, that all residents—regardless if they have asthma, COPD or other health issues—are impacted by the hazards of secondhand smoke.

All families deserve to live free of second-hand smoke. The only way to ensure this is to prohibit smoking in units. The American Society of Heating, Refrigerating, and Air



COALITION FOR A
TOBACCO-FREE HAWAII

Conditioning Engineers (ASHRAE) adopted a position that states, “[a]t present, the only means of effectively eliminating health risks associated with indoor exposure is to ban smoking activity. . . No other engineering approaching, including current and advanced dilution ventilation or air cleaning technologies, have demonstrated or should be relied upon to control health risks from ETS [environmental tobacco smoke] exposure in spaces where smoking occurs.”

Thank you for the opportunity to testify on this matter.

Deborah Zysman, MPH
Executive Director

For Hearing Date: Tuesday, March 20, 2012

Re: HB46 HD2

To: Senate Committee on Human Services; Senator Chun Oakland, Chair

Position: Strong Support

Members of this Committee and Senator Chun Oakland, thank you for the opportunity to give my testimony regarding the above-named measure. I strongly support this bill, but believe that in order for it to make a true impact for the better on the quality of life in public and low-income housing, some revisions are necessary.

I am a disabled resident of Kalakaua Homes, with a health disorder that is gravely worsened by secondhand smoke. For over a year, my health has experienced an unprecedented decline, such that I have become virtually incapacitated by the occurrence of my neighbors' smoke seeping into my unit. My doctors have helplessly stood by watching my health deteriorate, as my neighbors continue their habit with no accountability. So for me, the passage of this bill is a life and death situation, and I am aware of fellow tenants that have suffered and do suffer just as acutely on a daily basis with this problem for which no one has offered a timely solution. I believe that passage of HB46 is the opportunity that we have been waiting for, which will bypass many months and years on end of further suffering, public expense, and life endangerment.

This bill as it stands prohibits smoking in "common areas" of buildings in public housing, and provides an 18-month timeframe for Hawaii Public Housing Authority (HPHA) to "adopt rules expanding" the prohibition to other areas. These stipulations do not go nearly far enough to ensure and protect the public from the hazards of secondhand smoke for the following reasons:

1. Common areas are already off-limits to smokers, per house management rules. While I support enacting these limited rules into law per this bill, in fact on the ground, this would not confer more protection from secondhand smoke than we already have, because nothing would effectively change. **There is only one way to protect non-smoking residents from the toxic effects of secondhand smoke: to ban smoking throughout all buildings, to include individual units. I therefore strongly advocate that this bill be amended to revert back to its original language, which includes individual units. Smoking indoors should be completely prohibited.**
2. While HPHA has issued statements in the past that they intend to address this issue with incremental smoking restrictions, the urgency of the health and safety issues for those affected by secondhand smoke cannot afford to be treated with a prolonged and belabored agenda stretching out into the future, and constituting a vague, indefinite outcome. Eighteen months is far too long for those at risk to have to bear immediate consequences of secondhand smoke-related illness. **Time is of the essence.**
3. The prohibition of smoking in public housing rightly belongs with the Legislature, as a mandate, regardless of what the plans are within HPHA. **Protection of citizens from life-endangerment by other citizens is the province of law-making bodies, not the internal rule-making of subsidiary agencies.**

These conclusions are shared and corroborated by many professional public health organizations, studies, and expert opinions, a portion of which is expressed in the following literature. I have bolded in areas for emphasis.

-- According to an abstract compiled by authors James Repace (Biophysicist and Owner of Repace Associates, Inc., Secondhand Smoke Consultants), Ichiro Kawachi, PhD (Associate Professor, Department of Health and Social Behavior, Harvard School of Public Health) and Stanton Glantz (Professor, Department of Cardiology, University of California, San Francisco):

Breathing secondhand-smoke causes morbidity and mortality from cancer, heart disease, and respiratory disease, as well as acute sensory irritation. It causes the premature death of hundreds of thousands of nonsmokers worldwide. **Smoke-free buildings are the only remedy. Secondhand smoke cannot be controlled by ventilation, air cleaning, or spatial separation of smokers from nonsmokers.**

-- In a 2010 Press Release, "Puffing in Public Housing Poses Serious Health Risks to Tenants," The Harvard School of Public Health summarizes an article appearing in the June 17, 2010 issue of the *New England Journal of Medicine*, in the following excerpts:

"Research shows that those living in multiple-unit housing are being exposed to toxins from tobacco smoke," says Jonathan Winickoff, MD, MPH, lead author and pediatrician at MassGeneral Hospital for Children (MGH/C). "Even if you are not a smoker and don't smoke inside of your own apartment, if you have a neighbor who is smoking inside of his, the entire building is contaminated...The National Toxicology Program has identified more than 250 poisonous gases, chemicals, and metals in tobacco smoke, 11 of which are class A carcinogens [**the same category asbestos is in**]. Numerous epidemiologic studies show that exposure to tobacco smoke can cause lung cancer and cardiac disease in nonsmokers, and **the Surgeon General's report on involuntary smoking concluded that there is no safe level of exposure. Even brief exposures to tobacco smoke can adversely affect nonsmokers**, especially children, who experience increased rates and severity of asthma and other respiratory illnesses, as well as higher risk of sudden infant death syndrome.

Smoking in a single unit within a multiunit residential building puts other residents of the building at risk. Tobacco smoke can move along air ducts, through cracks in the walls and floors, through elevator shafts, and along plumbing and electrical lines to affect units on other floors. Mitigation measures like fans and air filters are not effective in preventing exposure. High levels of tobacco toxins can persist in the indoor environment long after the period of active smoking — a phenomenon known as third-hand smoke. Tobacco toxins from smoke are deposited on indoor surfaces and reemitted in the air over a period of days to years, and are found on rugs, furniture, clothing, and floors — all surfaces that children crawl and play on...Creating and maintaining smoke-free living space that encourages smoking cessation not only provides a healthy environment for children as they grow, it discourages them from picking up the habit. "When children see smoking in and around their homes, it normalizes the behavior for them," ...**Research shows that no-smoking policies in the home lead to lower smoking initiation rates by teens.** Americans living below the poverty level are 1.6 times more likely to smoke; **adopting a smoke-free policy in public housing units encourages inhabitants to "fight**

back” against the intense tobacco marketing that exists in low-income neighborhoods.”

-- The full article itself, “Regulation of Smoking in Public Housing,” appearing in the *NEJM*, was released on June 17, 2010, filed under the publication topic, “Health, Ethics, and Human Rights” and was authored by Jonathan P. Winickoff, M.D., M.P.H., Mark Gottlieb, J.D., and Michelle M. Mello, J.D., Ph.D. It asserts about secondhand smoke that, “Elderly or disabled persons with compromised cardiac or pulmonary function may be particularly susceptible” and concludes with the following:

*The use of [government regulation] to ensure that PHAs implement no-smoking policies in public housing raises ethical concerns and practical challenges; however, it is justified in light of the harms resulting from exposure to tobacco smoke, the lack of other avenues of legal redress for nonsmoking residents of public housing, **and the languid pace at which PHAs have voluntarily implemented no-smoking policies. The same legal, practical, and health issues that have driven successful efforts to make workplaces, private vehicles, and private housing smoke-free militate in favor of extending similar protection to the vulnerable public-housing population.***

As these materials state, clearly any regulation that does not include all indoor structures and units in a smoking ban is incomplete and ineffectual. Hawaii state law has set the precedent that people in confined indoor public areas have a right to be protected from secondhand smoke; for instance in workplaces, where people spend 8 hours a day, it is recognized that no one should be exposed involuntarily to the indoor air pollution that is secondhand smoke. Therefore, if people are at risk under these circumstances, imagine the risk to tenants who may be housebound and spending nearly all their waking hours in their homes — unable to move elsewhere. Law should immediately be made, through HB46 HD2 (i.e., reverting to the original bill), to correct this inconsistency.

Furthermore, the no-smoking law should extend to include outdoor areas, to insure against smoke drifting into windows and doors. While designated smoking areas have been created in Mainland no-smoking projects, here in Hawaii we have strong trade winds and open-air lanais that easily receive drifting smoke from nearby outdoor areas, jeopardizing residents on lower levels of buildings (many of whom are disabled.) For this reason, I strongly recommend that a ban be grounds-wide, to the edges of the property, with the provision that ash cans and trays be provided for smokers there. The measure should make residents responsible for their guests. Specifying an outside distance regulation in feet from a building runs the risk of exposing people indoors, depending on a given property’s layout.

Returning to the issue of timeliness and HPHA’s projected noncommittal plans, HPHA’s primary concern expressed has been the issue of resident compliance. The problem with this reasoning for delay is that whenever smokers have to accept the ban, they will do so, whether sooner or later, with the same ease or difficulty of compliance. There is no better day to comply with a smoking ban, in the eyes of smoker. However, the longer tenants are endangered, the greater the compounding risks to their health over time. All it takes is one bad asthma attack for someone to die of secondhand smoke, which could happen tomorrow.

Compliance will in fact be strengthened by a law, which goes much further in the minds of smokers than even a lease provision. No one wants to be evicted; but doing something illegal carries even more serious and weighty implications for anyone.

I hardly need to mention the exorbitant costs for medical care (in Medicaid funds) and other state or city emergency resources carried by the taxpayers for allowing smoking to continue in public housing as long as HPHA is willing to allow it. Isn't it bad enough that taxpayers carry the burden of smokers' habits, let alone the toll on citizens like myself who have chosen not to smoke?

Ultimately, this comes down to a civil rights issue, not a housing administrative one. Establishment of a state-wide no-smoking policy in public and low-income housing is a non-optional warranty of public health and safety that should be unequivocally enforced by the government.

Thank you again for your time and consideration.

Sincerely,
Daria A. Fand

March 17, 2012
Prepared for Hearing Date March 20, 2012

To:
Senate Committee on Human Services
Senator Suzanne Chun Oakland, Committee Chair

Subject: HB46 HD2

Dear Senator Chun Oakland and Members of the Committee,

I am writing in strong support of HB46 HD2 but feel it should be much stronger in its restriction on smoking. I feel an all-out ban is necessary, including in individual units, to insure the health and safety of non-smokers. As a life-long asthma sufferer and a close friend of someone living in public housing, who is strongly affected by second hand smoke, I feel it is the government's duty to insure that the health and well being of all its tenants are protected.

Government office buildings already enforce a ban on smoking within 20' of any opening, such as doors and windows; this was created for the safety and well being of all government workers. The same should be done for the people living in government housing. Thousands of dollars are lost each year to deal with health problems related to smoking and I do not feel government should contribute to the problem. As a taxpayer I believe the state should assist those who are in need, however I also believe it should not tolerate any behavior that endangers others, especially one that I consider to be a luxury and not a necessity.

I strongly urge you to revise and pass HB46 HD2 so that it will be a benefit for everyone in our state.

Mahalo for your time,
Scott Goto

Hearing Date: March 20, 2012

To: Senate Committee on Human Services and Chair Senator Chun Oakland

Subject: HB46 HD2

Position: Strong Support

I urge you to pass the Bill referenced above, and hope you amend it with the strongest and earliest possible ban on smoking in Public Housing. The dangerous impact of second-hand smoke on the tenants themselves is also of concern to the larger community beyond the tenants.

Second-hand smoke affects more than the children and/or non-smoking partners of smokers in their own units. Unsafe second-hand smoke is known to permeate multi-unit buildings, adversely affecting the health and safety of non-smoking tenants, whose welfare is of great concern to their loved ones beyond Public Housing who care for them.

As the mother of one such non-smoking and suffering tenant, Daria Fand, at Kalakaua Homes, I have been deeply grieved at the decline of her health over the past year due to smoking from other units nearby. This decline has led to her recent hospitalization, causing me to rush back to Hawaii from California to care for her. I have had to pay to have her convalesce elsewhere temporarily on an emergency basis, so that I can stay with her and take care of her away from harmful fumes. Prior to this, she attempted to escape by staying in her car, even considering staying in a storage locker. Our whole family is also grieved that she cannot live safely in her own home, and feel called upon to share my financial burden. Our only financial relief is that her medical bills as a disabled person are paid by Medicare and State of Hawaii Medicaid.

But I am afraid she will only get worse once I leave and she must return to that toxic atmosphere. How long must she and all of us who care for her wait for common sense measures to be taken to totally forbid smoking on the premises? A similar story may be played out among other families and friends of Public Housing tenants who have developed health problems from second-hand smoking. One smoker's habit affects multiple residents, which affects multiple families in a chain reaction.

The general public beyond our concerned circles also seems to support a total smoking ban in Public Housing. When the Coalition for Tobacco-Free Hawaii arranged for Daria to be interviewed on KITV4 News last October 25 (a story also picked up by MSNBC), an informal poll of Hawaii viewers responding to her plight agreed by 59% that all smoking should be banned in Public Housing, with only 7% against, and the rest undecided or qualifying their agreement. This suggests Hawaii taxpayers will also appreciate having fewer health-care bills to pay for Medicaid patients and other costly collateral damage related to smoking in Public Housing.

A strong anti-smoking bill in Public Housing will extend the generally accepted measures already enacted for public safety from second-hand smoke in other public venues to those who have no other housing recourse.

Mahalo for your consideration of my plea.

Sincerely,

Roxanne J. Fand

Retired UH Faculty Member

NAME OF BILL HD46 HD2

HEARING SENATE IN SENATE COMMITTEE ON HUMAN SERVICES

WHERE/WHEN AT CAPITAL TUESDAY 3/20/12 TIME 1:45PM CONFERENCE ROOM

016(CHAMBER LEVEL, BASEMENT)

COMMITTEE CHAIR: SENATOR CHUN OAKLAND.

MY NAME IS JAMES HALE AND I AM A SMOKER. THIS IS IN REGARDS TO MY FRIEND DARIA FAND, A GOOD FRIEND.

MY PROPPSAL IS THAT WE BAN SMOKING IN ALL PUBLIC HOUSING COMPLEXES IN HAWAII.

I PROSPOSE THAT WE PUT ALL RECEPTACLES AND ASH TRAYS IN ALL PUBLIC ENTRANCES IN FRONT OF THE PROPERTIES THROUGHOUT ALL PUBLIC HOUSING FACILITIES IN THE STATE OF HAWAII.

FURTHER MORE MY CONCERN FOR THIS MATTER HAS BEEN BROUGHT TO MY ATTENTION BY MY FRIEND. I FURTHER BRING TESTIMONY TO THE MATTER THAT THIS PROBLEM BRINGS A DANGER TO ALL MY FELLOW RESIDENCE IN THE COMPLEX THAT I LIVE IN INCLUDING MY FELLOW SMOKERS IN THE COMPLEX THAT I PRESENTLY LIVE IN. ME AND MY FRIEND DARIA FAND PROPOSE THAT SMOKING BE BANNED IN ALL PUBLIC HOUSING COMPLEX THROUGHOUT HAWAII. YOUR WRITTEN TESTIMONY IS GUARANTEED AND APPRECIATED IN THIS MATTER. THIS TESTIMONY IS IN ADVANCE 24 HOURS NOTICE IS HERE BY GIVEN TO YOU. THE DLIBERATIONS ON THE SENATE FLOOR WOULD GREATLY BE APPRECIATED AND GUARANTEED IF THIS BILL WOULD PASS IN FAVOR OF THE HOUSING COMMUNITY. FURTHER MORE I RECOMMEND THAT NO FURTHER DELAY TAKE PLACE IN THE PASSING OF THIS BILL. YOUR FURTHER ACTION IS GREATLY APPRECIATED AND RECOMMENDED. I INDICATE THAT I VERY STRONGLY SUPPORT THIS BILL AND WILL PROMOTE IT PROMPTLY WITH ALL MY FELLOW HOUSING CONSTITUINS.

ACCORDING TO MY OWN PERSONAL VIEWS ON THIS MATTER I FEEL THAT WE HAVE HAD THIS PROBLEM FOR A LONG TIME AND IT DOESN'T SEEM TO BE GETTING BETTER.

WE PROPOSE THAT THIS BILL BE PASSED RIGHT AWAY IN ORDER TO PROTOTECT ALL NON SMOKERS. THANK YOU FOR HEARING THIS MATTER PROMPTLY AND COURTEOUSLY.

SINCERELY MR JAMES HALE

FROM: WILLIAM H. AMEY

1545 KALAKAUA AVE. #101 "KALAKAUA HOMES"

HONOLULU, HI 96826

HB46 HD2

COMMITTEE CHAIR: SENATOR CHON OKLAND

I COMPLETELY SUPPORT THIS BILL AS IT IS, BUT WE NEED TO DO MORE. SIGNAGE IS VERY IMPORTANT.

POSTING SIGNAGE STATING THAT THIS AREA WAS "RESTRICTED SMOKING ON THIS PROPERTY." THESE SIGNS SHOULD BE POSTED AT ALL ENTRANCES AND LOCKED GATES AND OF-COURSE AT ALL ENTRANCES TO EACH BUILDING.

PUTTING LARGE CEMENT SAND FILLED CONTAINERS AT THE ENTRANCES FOR VISITORS/TENANTS TO EXTINGUISH CIGARETTES AND TO SUPPORT THE RESTRICTED SMOKING ON PROPERTY.

MORE TIME AND RESEARCH ON DISTANCES FOR RESTRICTED SMOKING AREAS ON PROPERTY IS REQUIRED.

AGAIN, SIGNAGE IS VERY IMPORTANT. LOCATIONS AND WORDING ESSENTIAL.

ALSO, I AM A SMOKER AND

I TOTALLY SUPPORT THIS BILL, BUT CHANGES ARE NEEDED. LET'S DO THIS.

W. H. Amey

FORMER PRESIDENT KALAKAUA HOMES
TENANT ASSOCIATION