

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

HOUSE COMMITTEE ON JUDICIARY

March 18, 2014 2:00 P.M.
Room 325, Hawaii State Capitol

In consideration of

**Senate Bill 651, Senate Draft 2, House Draft 1
Relating to Health**

Honorable Chair Rhoads and Members of the House Committee on Judiciary, thank you for the opportunity to provide you with comments regarding Senate Bill (SB) 651, Senate Draft 2 (SD2) House Draft 1 (HD1), relating to health.

The Hawaii Public Housing Authority (HPHA) offers the following comments in regards to this measure, which will prohibit smoking in and around public housing projects and state low-income public housing projects.

For the past year and a half, the HPHA has been working with stakeholders on revising the relevant administrative rules, and a public hearing was held on February 28, 2014 to gather comments on the proposed administrative rule changes. This effort incorporated the input from tenants, the U.S. Department of Housing and Urban Development (HUD), the Hawaii State Department of Health, the Coalition for a Tobacco Free Hawaii, and the Attorney General's office to ensure compliance with all relevant regulations. Highlights of the proposed administrative rules allow the HPHA to designate smoking areas, evict tenants on the 4th violation (includes their guests), and provides for reasonable accommodations.

The HPHA appreciates the opportunity to provide the House Committee on Judiciary with the agency's comments regarding SB 651, SD2, HD1. We thank you very much for your dedicated support.



COALITION FOR A
TOBACCO-FREE HAWAII

To: The Honorable Karl Rhoads, Chair, Committee on Judiciary
The Honorable Sharon E. Har, Vice Chair, Committee on Judiciary
Members, House Committee on Judiciary
From: Tiffany Gourley, Policy & Advocacy Director
Date: March 17, 2014
Hrg: House Committee on Judiciary, Tuesday, March 17, 2014 at 2:00 a.m. in Room 325
Re: **Support and comments for SB 651 SD 2 HD 1, Relating to Health**

Thank you for the opportunity to offer testimony in **support of the intent and offer comments** for SB 651 SD 2, which prohibits smoking in and around public housing under the jurisdiction of the Hawaii public housing authority (HPHA) and in and around elder or elderly households.

The Coalition for a Tobacco Free Hawaii (Coalition) is a program of the Hawaii Public Health Institute working to reduce tobacco use through education, policy and advocacy. The Coalition consists of over 100 member organizations and 2,000 advocates that work to create a healthy Hawaii through comprehensive tobacco prevention and control efforts. The Coalition also supports the public through its Smoke-Free Homes Initiative, designed to create smoke-free apartments and condos through voluntary policy adoption.

The Coalition recommends amending to prohibit designated smoking areas in parking lots.

For public health reasons, the Coalition recommends amending the proposed language in subsection (b) to prohibit designated smoking areas (DSAs) in parking lots. DSAs create a concentrated area of smoke. The majority of residents are required to walk through the parking lot to enter and exit the property. DSAs should be prohibited in parking lots to protect the majority of residents from being subjected to this high concentration of smoke. Consequently, this also protects persons smoking in DSAs from vehicular traffic.

The Coalition offers the following language:

(b) Notwithstanding subsection (a), the authority may designate one or more permissible smoking areas at least twenty feet away from any residential or other building, or any greater distance away as may ensure that the secondhand smoke does not infiltrate any dwelling unit, and not within a parking lot.

The U.S. Department of Housing and Urban Development encourages Public Housing Authorities to implement non-smoking policies.

Housing units can adopt their own rules to prohibit smoking. 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.”

During the 2012 session, a law was passed to prohibit smoking in public housing. The Governor vetoed the bill allowing the Hawaii Public Housing Authority (HPHA) a chance to implement an



administrative policy. Since then, the Coalition and Department of Health have been working with the HPHA to develop a policy and assist with education and outreach to ensure a successful outcome. However more than eighteen months after the veto, we still do not have an official policy in place.

Secondhand smoke has killed 2.5 million Americans and should be eliminated.

Secondhand smoke is dangerous; the 50th Anniversary U.S. Surgeon General Report released on January 17, 2014 states that any level of exposure to secondhand smoke is dangerous and can be harmful and over 2.5 million people have died from secondhand smoke.¹ 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.

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 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.

A handwritten signature in black ink, appearing to read "Tiffany L. Gourley". The signature is fluid and cursive, with a large loop at the end.

Tiffany L. Gourley, esq.
Policy and Advocacy Director

¹ U.S. Department of Health and Human Services. (2014). “The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General.” Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

SB651

Submitted on: 3/17/2014

Testimony for JUD on Mar 18, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Robinson	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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For Hearing Date: Tuesday, March 18, 2014, 2:00 PM, House Conference Room 325

Testimony Submitted By: Hannah L. Hedrick, PhD
Fern Forest, Hawaii County

To: House Committee on Judiciary
The Honorable Representative Karl Rhoads, Chair
The Honorable Representative Sharon Har, Vice Chair
Members of the House Committee on Judiciary

Subject: SB651 SD2 HD1, RELATING TO HEALTH

Position: Support, with Amendments

Honorable Committee Members:

Thank you for your efforts this session to develop legislation to reduce the involuntary exposure of public housing residents to secondhand smoke (SHS). Having worked during the past decade on progressive legislation for the County of Hawaii, I am grateful for your leadership in adopting language in adequate detail to extend protection to this neglected population in our State's responsibilities for the health and safety of all residents.

Toward that desired end, I strongly urge you to consider the document with amendments provided to you by committed community advocate Daria Fand. A proactive public housing resident, Daria has communicated with and provided documentation to HPHA administrators and to legislators for nearly three years. Please consider the results of Daria's extensive research into national standards related to smoke-free multi-unit housing in general and to public housing in particular.

Hawaii has an opportunity to enact landmark legislation creating statewide smoke-free public housing. Please do whatever is necessary to develop the best possible law and implementation process to serve as a model.

As I've stated in testimony related to previous bills, I strongly advise that the following points be considered in order to ensure ongoing accountability by current and future HPHA administrations:

1. HPHA should be prohibited from allowing exceptions, for any reason, for residents to smoke in their units.
2. Residents should be consulted about the creation of designated smoking areas (as indicated in the January 31, 2013, announcement to residents), which should be clearly identified and properly equipped, where they exist. No possible locations should be removed from consideration. Parking lots in particular should be allowed as designated smoking areas, because they are sometimes the best--or even only--option.
3. Consider that smoke-free signage throughout the facility should meet nationally-recognized standards in content and placement, as in the Hawaii statutory language related to signage in other smoke-free public places.

Note: Experience with smoke-free public housing policies and legislation has resulted in widespread recognition that appropriate signage is essential to successful implementation.

4. The effective date should be 90 days or an appropriate period to allow HPHA adequate time to make initial infrastructure changes to implement the legislation.

Thank you again for your careful consideration of this issue, which has a greater impact on public housing residents than any other threat to their health and safety.

For Hearing Date: Tuesday, March 18, 2014, 2:00 p.m., House conference room 325

Testimony Submitted By: Daria A. Fand

Honolulu, Hawaii

To: House Committee on Judiciary

The Honorable Representative Karl Rhoads, Chair

The Honorable Representative Sharon Har, Vice Chair

Members of the House Committee on Judiciary

Subject: SB651 SD2 HD1, RELATING TO HEALTH

Position: Support, with Amendments

Honorable Committee Members:

Thank you for hearing this important measure which will protect Hawaii's most vulnerable populations from the inescapable condition of involuntary secondhand smoke (SHS) exposure, a 24/7 hazard for many. This measure stands to finally uphold the same protections citizens in other public places have in existing Hawaii smoke-free laws.

As someone who has fought for my life due to SHS, and this legislation for over 2 years, **I must emphasize that getting this measure and law passed should be the priority.** It will greatly reinforce the respect residents have for the no-smoking policy, and therefore, positively impact compliance. That said, bear in mind that while this measure should not be a "strong-arming" device for the current Hawaii Public Housing Authority (HPHA) administration, it must also serve as an assurance of accountability of HPHA to its residents — for their quality of life and public health protection in perpetuity, beyond this administration's plans and actions. So while you must seriously take into account HPHA's objections or concerns about of the amendments I am recommending to strengthen the policy, weigh that with care against the fate of residents in the future if these are not adopted into statute (at least until or unless amendments are some day proposed to add them). Everything I'm recommending has been successfully implemented on hundreds of other public housing properties on the Mainland, and is widely endorsed nationally by smoke-free educators as either highly desirable or essential to an effective policy.

I have submitted a DRAFT BILL PROPOSAL FOR SB651 SD2 HD2, WITH MY ADDED AMENDMENTS IN RED TEXT, FOR EASE OF COMPARISON WITH SB651 SD2 HD1 — PLEASE SEE ATTACHED.

Summary of amendments in draft bill contained:

Effective Date: Amend to "90 days after its approval", to allow HPHA extra time for infrastructural changes, such as Designated Smoking Area (DSA) assignment and No-smoking signage (HPHA may be ready sooner, but better safe than sorry!)

SECTION 1 (b):

-- **Regarding Designated Smoking Areas (DSA's):** DSA's have a proven track record of significantly improving compliance, especially in the beginning of a new policy. **Thus, I've proposed adding subsections (1) and (2),** respectively, to mandate identifying signage and litter-preventive receptacles at DSA locations, *where they exist, though DSA's are not mandated.* HPHA has objected to this language, even though they have agreed with the concept of DSA's, where necessary. HPHA has mentioned fears of vandalism, but what alternatives do they have in mind for their DSA's, to identify them and keep them clean, therefore insuring they are functional? I recommend asking if HPHA might compromise on this language as being conducive to their own goals of viable DSA's.

-- **General note about DSA's:** Given the importance of DSA's, do not add restrictive, overly-prescriptive language about where to locate such sites on a property, such as "not in a parking lot." With all due respect to agencies concerned about the concentration of SHS in parking lots (and vehicular traffic, which is not an issue if sensibly placed), there is nothing inherently better about one location or another, and in fact, parking lot areas may be ideal locations, as furthest away from buildings, which would minimize drifting smoke into dwellings (the priority!) In cases, prohibiting DSA's in prescribed areas may preclude some properties from having them altogether. It all depends on property layout, so DSA placement should be handled on a case-by-case project basis, with resident and management input. No one-size-fits-all!

SECTION 1 (c):

-- **LANGUAGE TO STRIKE, IMPORTANT:** The last sentence of this subsection, as follows: "The authority may display additional "No smoking" signage...in or at enclosed, partially enclosed, or open common areas [~~where conspicuous notice is deemed necessary or appropriate by the authority.~~]" Replace stricken material with, "for the purpose of conspicuous notice", since this conveys more emphasis on the purpose of the signs, and less on the "authority", whose power is already implicit. This is not a point HPHA contends, and would only streamline and properly focus the language.

-- **Language to add:** The importance of "No-smoking" signage can't be overestimated as an essential compliance tool. As Serena Chen, Regional Advocacy Director with the American Lung Association in California states, "Signage is the first line of defense." **Please consult existing "No-smoking" HRS language for all other smoke-free public places, stated as follows:**

§328J-9 **Signs.** Clearly legible signs that include the words "Smoking Prohibited by Law" with letters of not less than one inch in height or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted in and at the entrance to every place open to the public and place of employment where smoking is prohibited by this chapter by the owner, manager, or other person in control of that place.

My draft adapts the above HRS language for purposes of this legislation, adding it to bill language as follows:

"Clearly legible signs that include the words "Smoking Prohibited by Law" with letters of not less than one inch in height or the international "Non Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be posted **in or at any main entryway or face of each individual building** on the property ..."

Note that the text in bold above does not mandate a prodigious number of signs everywhere — but just at major point(s) of entry on or in a given building, in statutory parity. This is quite reasonable, given that without visible reminders of the policy, it is "out of sight, out of mind", leading to more violations, which lead to more cost, manpower, and drain on staff. While HPHA has objected, maybe they can agree that this very modest language will benefit the long-term viability of the policy, and create an environment more equipped to sustain the change, as well as serve posterity well.

SECTION 1 (d) and (f):

This **added** language is borrowed from HB2577, introduced by Chair Rhoads on the same topic as this measure. It benefits the bill by reinforcing points.

I hope this Committee will thoughtfully consider these amendments that I've recommended, placing extra safeguards into law and refining language.

Thank you for your regard of my well-researched testimony as a devoted community advocate.

**DRAFT PROPOSAL
SUBMITTED BY: DARIA FAND**

S.B. NO. 651
S.D. 2
H.D. 2

THE SENATE

TWENTY-SEVENTH LEGISLATURE,
2014
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO HEALTH.

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

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

"§356D- Prohibition on smoking in and around public housing; designated smoking areas. (a) Smoking shall be prohibited in any public housing project, elder or elderly household, as defined in section 356D-1, or state low-income housing project, as defined in section 356D-51, within:

- (1) Each individual housing unit;
- (2) All common areas;
- (3) Community facilities; and
- (4) Twenty feet from each individual building of the public housing project, and from any entrance,

exit, window, and ventilation intake that serves an enclosed or partially enclosed area.

(b) Notwithstanding subsection (a), the authority may designate one or more permissible smoking areas at least twenty feet away from any residential or other building, or any greater distance away as may ensure that the secondhand smoke does not infiltrate any dwelling unit.

(1) The authority shall place and maintain clearly visible identifying signage at the locations of any designated smoking areas where they exist.

(2) The authority shall place and maintain receptacles for the disposal of cigarette litter at the locations of any designated smoking areas where they exist.

(c) The authority shall place and maintain "No smoking" signage at all entrances and exits of the property. Clearly legible signs that include the words "Smoking Prohibited by Law" with letters of not less than one inch in height or the international "Non Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be posted in or at any main entryway or

face of each individual building on the property, and at any other appropriate location. The authority may display additional "No smoking" signage at residential and community facilities at their entrances and exits, offices, and in or at enclosed, partially enclosed, or open common areas [where conspicuous notice is deemed necessary or appropriate by the authority.] for the purpose of conspicuous notice.

(d) Failure of a tenant or any guest of the tenant to comply with the no smoking provision pursuant to subsection (a) constitutes a ground for termination of the lease, rental agreement, permit, or license, including a month-to-month tenancy, and eviction from the dwelling unit.

(e) For purposes of this section:

"Common areas" means roofs, halls, sidewalks, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits of the building or buildings, basements, yards, gardens, recreational facilities, parking areas, storage spaces, and other parts of the project or household normally in common use or other areas designated by the authority.

"Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form.

(f) The authority may adopt rules pursuant to chapter 91 to effectuate the purposes of this section."

SECTION 2. Section 356D-92, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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) Upon a third violation of section 356D-___ ; provided that a violation of any of these terms by a non-resident, a guest who is visiting a resident, or by any member of the resident's household, shall be deemed a violation by the resident; or

~~[-(5)]~~ (6) The existence of any other circumstances giving rise to an immediate right to possession by the authority."

SECTION 3. This Act does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect [~~on July 1,~~
2050.] 90 days after its approval.

INTRODUCED BY: _____

LATE

SB651

Submitted on: 3/17/2014

Testimony for JUD on Mar 18, 2014 14:00 min Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kimo Cruz	Individual	Oppose	No

Comments:

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LATE

SB651

Submitted on: 3/17/2014

Testimony for JUD on Mar 18, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Wells	Individual	Oppose	No

Comments:

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LATE TESTIMONY

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

HOUSE COMMITTEE ON JUDICIARY
SB651,SD2,HD1, RELATING TO HEALTH

Testimony of Linda Rosen, M.D., M.P.H.
Director of Health

March 18, 2014
2:00pm, Room 325

1 **Department's Position:** The Department of Health (DOH) supports with suggestions
2 SB0651,SD2,HD1 which prohibits smoking in and around public housing and state low-income
3 projects under the jurisdiction of the Hawaii Public Housing Authority (HPHA) and in and
4 around elder or elderly households. The DOH supports extending the minimum distance of
5 designated smoking areas to 25 feet and inclusion of language to protect parking lots from
6 becoming default smoking areas. The DOH also recommends that language regarding signage
7 be consistent with State law.

8 **Fiscal Implications:** None for DOH.

9 **Purpose and Justification:** SB0651,SD2,HD1 further amends Chapter 356D, Hawaii Revised
10 Statutes (HRS), to change its effective date to July 1, 2050. The DOH appreciates the
11 legislature's intent to facilitate discussion and empower HPHA to proceed unhindered in their
12 rulemaking process.

13 The DOH supports efforts already made in this measure to provide for designation of
14 smoking areas at distances greater than what is minimally recommended. To align with added
15 protections against secondhand smoke (SHS) built into HB2577, the DOH recommends that

1 Urban Development's (HUD) toolkit for Smoke-free homes contain recommendations on using
2 signage to communicate expectations for residents, visitors and staff.

3 The scientific findings and recommendations of the U.S. Surgeon General on the hazard
4 of involuntary second hand smoke (SHS) exposure to tobacco smoke by nonsmokers states that:
5 1) There is no safe level or amount of exposure to SHS, and breathing even a little amount can be
6 dangerous; 2) Children are more likely to have lung problems, ear infections, and severe asthma
7 from being around tobacco smoke; 3) Breathing SHS is a known cause of sudden infant death
8 syndrome; 4) SHS is a known human carcinogen (cancer-causing agent); and 5) Inhaling SHS
9 causes lung cancer, coronary heart disease, and strokes in nonsmoking adults.

10 Hawaii's current smoke-free workplace and public places law, Chapter 328J, HRS
11 enacted in 2006, protects the public in enclosed and partially-enclosed areas, but does not cover
12 and excludes private residences. The federal HUD Authority actively supports and encourages
13 the creation of smoke-free residential public housing properties governed under their jurisdiction.

14 The DOH supports this measure to protect the residents of public housing by banning
15 smoking and supports SB0651,SD2,HD1 with amendments.

16 Thank you for the opportunity to testify.

LATE TESTIMONY

SB651

Submitted on: 3/18/2014

Testimony for JUD on Mar 18, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Sabrina Spencer	Individual	Oppose	No

Comments:

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