

STATE OF HAWAII
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**Testimony COMMENTING on HB2531
RELATING TO PUBLIC HOUSING**

Written Testimony

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH

Hearing Date: February 10, 2016

Room Number: 329

1 **Fiscal Implications:** The Department of Health (DOH) defers to the Hawaii Public Housing
2 Authority (HPHA) on the fiscal implications of HB2531.

3 **Department Testimony:** The DOH offers comments regarding the purpose of HB2531 to
4 amend §356D-6.5, HRS by fortifying the smoke-free protections for those living in public
5 housing. DOH defers to the HPHA, and will continue to support HPHA's efforts to effectively
6 implement the smoke-free public housing law.

7 DOH acknowledges the intent of this measure is to ensure smoke-free protections are
8 implemented effectively at all public housing complexes throughout the state but shares concerns
9 with HPHA that what is proposed is overly prescriptive. This measure provides specificity to the
10 smoke-free public housing law enacted in June 2014, by further defining the term "violation" to
11 include a description of responsible staff and evidence of violations. Smoke-free policies require
12 time, collaboration, and consistency to enforce, and offers that the DOH will continue to work
13 with partner agencies to support HPHA in strengthening enforcement through ongoing training
14 and education, and by increasing access to cessation services.

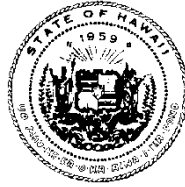
15 The DOH Tobacco Prevention and Education Program (TPEP) currently works with the
16 HPHA, the Hawaii Public Health Institute (HIPHI), and the DOH Public Health Nursing Branch
17 (PHN) to promote health and wellness initiatives in public housing complexes. This
18 collaborative team is also charged with supporting HPHA administration in the implementation
19 of the smoke-free public housing law. The strategies include ongoing education and training of

1 managerial staff to uphold smoke-free policies and increase compliance among tenants. The
2 DOH is also partnering with the Hawaii Tobacco Quitline and community-based cessation
3 providers to ensure that staff and tenants who want to quit smoking have access to effective
4 services.

5 Thank you for the opportunity to testify.

6 **Offered Amendments:** None.

DAVID Y. IGE
GOVERNOR



HAKIM OUANSAFI
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BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON HEALTH

February 10, 2016 10:00 A.M.
Room 329, Hawaii State Capitol

In consideration of
HB 2531
RELATING TO PUBLIC HOUSING.

Honorable Chair Au Belatti and Members of the House Committee on Health, thank you for the opportunity to provide comments regarding House Bill (HB) 2531, relating to public housing.

The Hawaii Public Housing Authority (HPHA) supports the intent of this measure to require the HPHA to document violations related to prohibited acts of smoking, and to define the term "violation" as it relates to prohibited acts of smoking in and around public housing.

The HPHA welcomes any efforts to improve the health and well-being of our tenants, and is grateful to the Legislature for passing the no-smoking ban at HPHA properties back in 2013. Prior to the ban, the HPHA adopted administrative rules, and has since adopted lease addendums to administer the no smoking policy. Additionally, any violation of the lease, administrative rules or statute by a tenant is documented by management, added to the tenant's file and may be used in a case for eviction.

The HPHA appreciates the opportunity to provide the House Committee on Health with the HPHA's testimony regarding HB 2531. We thank you very much for your dedicated support.



Date: February 9, 2016

To: The Honorable Della Au Belatti, Chair
The Honorable Richard Creagan, M.D., Vice Chair
Members of the House Committee on Health

From: Jessica Yamauchi, Executive Director, Hawai'i Public Health Institute

Re: **Comments for HB2531, Relating to Public Housing**

Hrg: February 10, 2016 at 10:00am at Capitol Room 329

Thank you for the opportunity to provide comments on HB2531 which requires the Hawai'i Public Housing Authority to document violations related to prohibited acts of smoking.

The Coalition for a Tobacco-Free Hawai'i (Coalition) is a program of the Hawai'i Public Health Institute (HIPHI) that is dedicated to reducing tobacco use through education, policy, and advocacy. With nearly two decades of history in Hawai'i, the Coalition has led several campaigns on enacting smoke-free environments, including being the first state in the nation to prohibit the sale of tobacco and electronic smoking devices to purchasers under 21 years of age.

The Coalition supports initiatives that aim to protect all public housing residents from the dangers of secondhand and thirdhand smoke.

In 2014, the State Legislature enacted a law prohibiting smoking in all public housing, elder or elderly household (HRS 356D-1) and state low-income housing project (HRS 356D-51) affecting more than 80 properties. This rule provides protections from smoking in all indoor private and common areas as well as outdoor common areas and within 20 feet of buildings and common areas on properties that are managed by the Hawai'i Public Housing Authority (HPHA). The Coalition supports and partners with HPHA, Hawai'i State Department of Health (DOH) Tobacco Prevention and Education Program (TPEP) and Public Health Nursing Branch (PHN) to assist with the implementation of smoke-free living in all public housing projects in the State.

The Coalition understands that the implementation of smoke-free policies is an iterative process that requires continued engagement and communication.

HPHA engages with its partners to host monthly manager meetings and provide presentations that focus on topics that property managers have identified as priority. The Coalition regularly attends these meetings. Having a space for dialogue and interaction among different

stakeholders is an important step to develop a common understanding on the implementation and enforcement of smoke-free policies.

The Coalition defers to HPHA and the DOH on the implementation and education of smoke-free policies.

The Coalition continues to educate the legislature in advancing policies that aim to protect the public from secondhand and thirdhand smoke. The Coalition defers to HPHA and DOH on the enforcement and education on smoke-free housing. As a resource and partner, the Coalition will support any requests to assist in the successful implementation of smoke-free policies such as providing training to educate the residents and administrative staff on smoke-free environments, as well as providing online resources on implementation and enforcement.

Thank you for the opportunity to provide comments on HB2531.

Mahalo,

A handwritten signature in black ink that reads "Jessica Yamauchi". The signature is written in a cursive, flowing style.

Jessica Yamauchi
Executive Director

For Hearing Date: Wednesday, February 10, 2016, 10:00 a.m., House
Conference Room 329

Testimony Submitted By: Daria A. Fand
Honolulu, Hawaii

To: House Committee on Health

The Honorable Representative Della Au Belatti, Chair
The Honorable Representative Richard Creagan, Vice Chair
Members of the House Committee on Health

Subject: HB2531, RELATING TO PUBLIC HOUSING

Position: Strong Support

Honorable Committee Members:

I am a resident of public housing, as well as a disabled patient suffering from a physical disorder that is profoundly worsened by exposure to secondhand smoke. I am also an active community member and advocate. In that vein, I have for several years faithfully attended monthly Resident Advisory Board (RAB) meetings at the headquarters of Hawaii Public Housing Authority (HPHA), which has exposed me to the administrative processes behind HPHA's decisions, and allowed me the privilege to hear residents' concerns from all over the state. I consider it my duty to be informed about all aspects of our issues, and so I bring that background knowledge and experience to you in my testimony.

I fought very hard for 3 years to see passage of the public housing smoke-free law in 2014, and one would like to think that my sufferings ended with that victory for public health. It was a wonderful first step – but it is not enough.

Unfortunately, since that time almost 1.5 years ago, the daily and nightly invasiveness of secondhand smoke continues unabated in my home and its common areas, seriously degrading my health and leaving me helpless. My nonsmoking neighbors are likewise affected, many of them frail, often with ailments life-threateningly affected by secondhand smoke.

While it is admittedly hard to enforce the smoking ban because people can

and do covertly violate it in the privacy of their homes, HPHA's absence of commitment to enforcement and a viable policy on the ground have been the largest contributors to these failed outcomes. HPHA has not moved to create any cohesive implementation protocols or strategies for its staff. As a result, the rule remains an on-paper model at best, with property managers left to their own dispositions, definitions, inclinations, and devices. On a large property like ours, this means severely compromised enforcement, with staff turning a blind eye to violations, excusing them, dismissing them, neglecting to investigate or follow up with complaints, and an overall attitude of apathy. I have been told to cite violations myself, or "I'm busy now, sorry" when I complained about smoking activity. I also have heard security and others charged with care of the premises over the years tell me that they see the same people violating again and again, and while they report these incidents, nothing changes.

It is very clear from input within the RAB and my direct experience that HPHA has deprioritized this policy indefinitely, rendering it intractably ineffectual, and that those of us who die a little each day from smokers' habits are left unprotected by the law as it stands.

This situation militates for a stronger law with provisions that hold HPHA to a greater standard of accountability, which will lead to greater enforcement and public protections. As residents observe more structure, they will start to regard this law with its due respect, and HPHA will no longer dismiss or fail to act on clear, unequivocal incidences of violation.

But consider a more general legal benefit of this measure: the purpose of amendments in HB2531 is to create specific, unambiguous language on the critical matter of defining the word "violation," which improves on the existing law, erasing questions of interpretation at a basic level of understanding. Additionally, this bill reinforces the validity of consequences for documented violations, which HPHA has also undermined with its policy.

Specifically, HB2531 accomplishes these two objectives:

1) **(Section 1(f), Section 1(1), and Section 1(2)):** defines and clarifies "violation" in the statute, so that all parties are held to a consistent standard of interpretation; **all of the items A-E describe those acts or material evidence of smoking violation that are irrefutable**; these criteria are

followed nationally in other smoke-free housing models, and are endorsed by DOH; and

2) (**Section 1 (d)**): requires HPHA to add all of a resident's violations to their record cumulatively and permanently, which gets rid of a loophole HPHA created for smokers to have their violations stricken from the record if they go to a smoking cessation program. This was a capitulation on the part of HPHA to a tiny handful of vocal smoking residents on the RAB who objected to the smoking ban. This caveat has been widely objected to, including by the DOH. It makes already-difficult enforcement almost impossible by creating a revolving door of violators, and renders residents unconcerned about consequences for non-compliance. (It is also ill-advised by national standards for a housing entity to tie the personal choice to quit to the lease agreement.) This amendment would align HPHA with the original "3-strikes" spirit of the law, which is an appropriate model based on national precedent. (Note: I am unsure what the language, "Violations shall run consecutively rather than concurrently" means, but as long as it satisfies the goal of counting accumulated violations as I've described above, that is what's important.)

Concerns that might be raised:

It is worth anticipating a few objections that some parties may use to argue against HB2531.

1. It may be argued that tightening enforcement will cause particularly vulnerable individuals, such as the mentally ill and elderly who smoke, to get evicted and become homeless. We have seen this argument before, when the bill for the smoke-free law was being heard, and the fact remains that it is extremely hard to evict anyone from housing unless it is over a felony or non-payment of rent. Even if 3 violations trigger a referral to the eviction board, a resident certainly does not automatically face eviction. Eviction is a last resort in the process, but residents plead their case and in many instances, those who are indigent and frail, with mitigating circumstances, are shown clemency. I have personally seen many residents who committed repeated egregious violations of many kinds continue to live in my complex after an eviction hearing. The eviction board includes volunteer residents, some of whom likely sympathize with smokers, so hearings would tend to favor a pardon.

Note that HUD has over 600 smoke-free properties nationally to date, many of them entirely elderly populations, and no one has suffered a homeless crisis. HUD continues to strongly urge robustly enforced smoke-free policies on all properties.

It is important to weigh out the minuscule risk of eviction against the very real, existent threat that secondhand smoke poses to senior citizens, the disabled, and children. One smoking elderly or mentally ill resident can easily sicken dozens of other elderly or mentally ill residents because secondhand smoke travels far and wide from its source. Also, some elderly who smoke use oxygen tanks, which is a fire and explosion risk. The law was designed to protect all individuals from such threats, and so it is not a tenable position that enforcement poses a greater risk to vulnerable individuals than the secondhand smoke risk.

Finally, anyone who would argue that enforcement endangers vulnerable populations is essentially arguing against the law which already exists. The intent of the law, as in any law, is that it be applied equally to all, and compromising enforcement is tantamount to condoning noncompliance. Providing lenience unequally would lead to unfair treatment, and would result in a breakdown of all respect for the policy among residents. The message that enforcement either can't or shouldn't be diligently pursued undermines the entire premise of the rule, leading as it has to failure.

2. It might be argued that the law is “hard to enforce, especially since seeing a violation is necessary to cite it.” That concern is resolved in the language of this bill, which requires “witnessing” of the enumerated types of evidence constituting violation.

There is no basis for any defeatist position that “enforcement is already hard,” discouraging stronger enforcement language. Why should something hard not be made easier in any way possible? HB2531 does just that.

This law has to mean something to residents and staff of HPHA for it to have its intended effect and for its viability to prevail. **Enforcement is the key. HB2531 is a powerful, clarifying and timely remedy toward that end.**

Please pass HB2531 to advance and activate the smoke-free statute in public housing, so that it becomes a living reality.

On behalf of all those who share my plight, thank you for this opportunity to submit my informed plea.

Daria A. Fand

Public Housing Resident and Public Health Activist