

# SR58

**Measure Title:** REQUESTING THE HAWAII PUBLIC HOUSING AUTHORITY TO DOCUMENT VIOLATIONS OF ITS PROHIBITION ON SMOKING IN AND AROUND PUBLIC HOUSING.

**Report Title:** Public Housing; Smoking; Violations

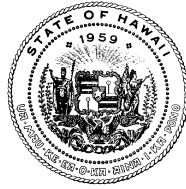
**Description:**

**Companion:**

**Package:** None

**Current Referral:** HOU, CPH

**Introducer(s):** CHUN OAKLAND, Baker, Espero, Keith-Agaran, Nishihara, Shimabukuro, Wakai



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

WRITTEN ONLY

**Testimony COMMENTING on SCR87/SR58  
REQUESTING THE HAWAII PUBLIC HOUSING AUTHORITY TO DOCUMENT  
VIOLATIONS OF ITS PROHIBITION ON SMOKING IN AND AROUND PUBLIC  
HOUSING**

SENATOR ROSALYN H. BAKER, CHAIR  
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Hearing Date: April 4, 2016

Room Number: 229

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health (DOH) recognizes the intent of the  
3 resolutions is to achieve optimum implementation of the smoking prohibitions found in Hawaii  
4 Revised Statutes (HRS) §356D-6.5 at all Hawaii Public Housing Authority (HPHA) properties.  
5 The Department recommends upholding compliance through appropriate education, training, and  
6 resident and staff access to cessation resources.

7 Implementation of a smoke-free housing policy such as §356D-6.5, HRS requires a  
8 multi-pronged approach that includes education and awareness, staff training, access to cessation  
9 resources, and an internal enforcement plan. The DOH Tobacco Prevention and Education  
10 Program (TPEP), in partnership with the DOH Public Health Nursing Branch and the Hawaii  
11 Public Health Institute, will continue to provide technical assistance to support the HPHA in  
12 upholding the law to protect staff, residents, and guests of public housing from the well-  
13 documented dangers of secondhand smoke.

14 Thank you for the opportunity to testify.

15 **Offered Amendments:** None.

For Public Decision Making Date: Monday, April 4, 2016

Time: 10:15am

Place: Senate Conference Room 229

**Testimony Submitted By: Daria A. Fand**

Honolulu, Hawaii

**To: Senate Committee on Commerce, Consumer Protection, and Health**

The Honorable Senator Rosalyn Baker, Chair

The Honorable Senator Michelle Kidani, Vice Chair

Members of the Committee

**Subject: SCR87/SR58; PUBLIC HOUSING; SMOKING; VIOLATIONS**

**Position: Strong Support, both measures**

Honorable Committee Members:

I am appealing to you as a disabled public housing resident and community public health advocate, seeking your support in rectifying a troubling situation within Hawaii Public Housing Authority (HPHA), regarding their smoke-free policy.

When the smoke-free law for public housing was adopted in 2014, I celebrated and hoped for a chance for Hawaii's most vulnerable residents, myself included, to be protected in their right to clean and healthful air. Unfortunately, in the nearly-2 years since that time, involuntary exposure to second and thirdhand smoke continues unabated, largely due to the way violations are handled by the HPHA administration.

Daily and nightly, I am subjected to incursions of secondhand smoke in my unit, which has profoundly exacerbated my disabling condition and caused my health to seriously deteriorate. My doctors feel powerless to help me as long as this situation persists. Being moved to another unit would solve nothing, because the threat is equal everywhere.

It is true that enforcement is an ongoing challenge, since violators often find ways to hide their activity. However, HPHA has made the problem worse

by fostering a climate of leniency where violations may be stricken from residents' records, which a resident may negotiate.

The specific HPHA Administrative Rule allowing this is as follows, with my emphasis of the objectionable portion in red:

§17-2028-59 Rental agreement termination.

(b)(6) Violates the smoking prohibitions pursuant to section 17-2028-60 on more than three occasions and receives written notice of said violations; **provided that if tenant, any member of the tenant's household, or any guest or other person under the tenant's control receives only one violation of section 17-2028-60 in one year, and participates in and completes a smoking cessation service program within the same year, the authority will clear the one violation and shall not deem the incident as a violation for the following year;**

Source: [http://www.hpha.hawaii.gov/referenceinformation/Admin\\_Rules/17-2028\\_2014-03-20.pdf](http://www.hpha.hawaii.gov/referenceinformation/Admin_Rules/17-2028_2014-03-20.pdf) , pages 2028-40, 41

In an HPHA public hearing on February 28, 2014, the DOH, who is partnering with HPHA to help them effectively implement the smoke-free policy, objected to the above draft rule, stating in testimony that it “may render the [smoke-free] policy ineffective”, and issued the following recommendation in reference to the above:

1\_) **Section 17-2028-59 (b6), Rental Agreement Termination -**  
The DOH proposes the following revisions:

**Recommended language:** Recommend striking part of section (b) to read as follows: “(6) Violates the smoking prohibitions pursuant to section 17-2028-60 upon three occasions and receives written notice of said violations.”

**Explanation:** The DOH will assist the HPHA with support for cessation services to tenants as well as staff. Cessation services; (sic) however, as a means of clearing someone's record, may have the unintended consequence of wiping a violator's slate clean while still potentially engaging in the act of smoking.

(Please see attached document, pages 1-2, accompanying this testimony, for the reference.) The DOH was joined in this recommendation by the Coalition for a Tobacco-Free Hawaii, whose parallel testimony you may verify with their Director.

HPHA disregarded these recommendations and adopted the ill-conceived rule.

**Given how difficult it is for a resident to be officially cited for a violation in the first place, the very least the policy should stipulate is that any violation remains on a resident's record PERMANENTLY, with no caveats. *These resolutions would facilitate this important step towards much-needed effective enforcement.***

Without this measure, HPHA will continue to deal in a revolving door of violators, where smokers do not take accountability for their actions, have no regard for consequences, and nonsmokers continue to bear the brunt.

As a worthy footnote, HPHA's original vision for the smoke-free policy was appropriately strict, without allowing violations to be negotiated, but then they compromised it in an attempt to placate a small, vocal minority of smokers who were against a smoke-free policy. These resolutions would conform to and lend support to HPHA's original intent, as it should be restored.

In addition to its threat to air quality, HPHA's conditional treatment of violations goes against nationally recognized policy advice not to conflate a resident's private choice to quit smoking with lease provisions. Furthermore, the language suggests that a resident's guest submit to a smoking cessation program as a remedial action of the resident, which there is obviously no way of tracking and is highly presumptuous.

Finally, HPHA has stated at Resident Advisory Board (RAB) meetings which I attend monthly, as well as in response to questioning at SCR87/SR58's last hearing in the Senate Housing Committee, that its agency is highly unlikely to ever evict someone purely on the basis of smoking infractions (i.e., repeatedly injuring neighbors with secondhand smoke and breaking the law!) Aside from being a troubling position, that militates even more for the most stringent documentation of violations possible.

**Keeping smoking and other lease violations on record is the standard of all other Public Housing Authorities nationally, as an obviously common-sense practice of enforcement.** There is no reason HPHA should deviate.

The appropriate methods to help residents comply should involve “front-end” education, community outreach, and smoking cessation services, which is the aim of the DOH. These are positive strategies to motivate residents -- the “carrot” approach -- and should be strongly encouraged. However, it is inappropriate to sacrifice the necessary enforcement -- “the stick” approach -- of the policy as a motivational tool. **Expunging violations only sends the unintended, insidious message that a violator is expected to violate again, and may be granted a clean slate to do so – which is absolutely contrary to the spirit of compliance!**

As these resolutions point up the urgency of curbing the lethal and long-lasting impact of second and thirdhand smoke we are suffering in public housing, I plead that you pass these two resolutions, SCR87 and SR58, to move HPHA towards a more viable, respectable policy.

Please advance these measures in support of our mission to make smoke-free public housing *actually* smoke-free.

Mahalo.

Daria A. Fand

Public Housing Resident, Public Health Advocate

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [CPH Testimony](#)  
**Cc:** [dylanarm@hawaii.edu](mailto:dylanarm@hawaii.edu)  
**Subject:** \*Submitted testimony for SR58 on Apr 4, 2016 10:15AM\*  
**Date:** Saturday, April 02, 2016 9:59:09 PM

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**SR58**

Submitted on: 4/2/2016

Testimony for CPH on Apr 4, 2016 10:15AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dylan Armstrong	Individual	Support	No

Comments:

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