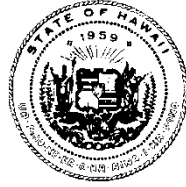


DAVID Y. IGE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

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STATE OF HAWAII
HAWAII PUBLIC HOUSING AUTHORITY
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Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON JUDICIARY

Tuesday, April 4, 2017
2:15 PM
Room 325, Hawaii State Capitol

In consideration of
HCR 114 HD1/ HR 68 HD1
REQUESTING THE HAWAII PUBLIC HOUSING AUTHORITY TO CONTINUE TO DOCUMENT VIOLATIONS OF THE PROHIBITION ON SMOKING IN AND AROUND PUBLIC HOUSING

Honorable Chair Nishimoto and Members of the House Committee on Judiciary, thank you for the opportunity to provide comments for Housing Concurrent Resolution 114 and House Resolution 68, requesting the Hawaii Public Housing Authority (HPHA) to permanently document violations of public smoking in and around public housing.

The HPHA is grateful to the Legislature for passing the no-smoking ban at HPHA properties back in 2013, and welcomes efforts to improve the health and well-being of our tenants. However, the HPHA does not feel that this resolution is necessary in the enforcement of the law, as our current practices include documenting violations (below) and allows tenants an opportunity to remedy their violations rather than punish them indefinitely. Prior to the passage of the no-smoking law, the HPHA adopted administrative rules after consultation with the Resident Advisory Board, our tenants, and the public, and has since adopted lease addendums to administer the no-smoking policy. Any violation of the lease, administrative rules or statute by a tenant is already documented by management, added to the tenant's files and may be used in a case for eviction.

Although it is very difficult to administer this policy while tenants are inside their units and during afterhours and weekends while no staff is present, the HPHA has made great efforts and have documented multiple violations as follows:

HPHA Asset Management Project (AMP)	Number of Violations Issued in 2016	Tracks Smoking Complaints from Tenants
30 - Puuwai Momi	15	Yes
31 - Kalihi Valley Homes	4	Yes
32 / 33 - Mayor Wright Homes	3	Yes
34 - Kalakaua Homes	4	Yes
35 - Kalanihuia	2	Yes
37 - East Hawaii	0	Yes
38 - Kaua'i	0	Yes
39 - Maui / Moloka'i	0	Yes
40 - Kuhio Homes	0	Yes
42 - Hale Po'ai	1	Yes
43 - West Hawaii	10	Yes
44 - Waimaha Sunflower	0	Yes
45 - Ko'olau Village	0	Yes
46 - North Hawaii	1	Yes
49 - Kauhale Nani	3	Yes
50 - Palolo Valley Homes	0	Yes

The HPHA appreciates the opportunity to provide the House Committee on Judiciary with the HPHA's comments regarding HCR 114 HD1/ HR 68 HD1. We thank you very much for your dedicated support.



Progressive Democrats of Hawai'i

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April 3, 2017

To: The Honorable Scott Y. Nishimoto, Chair
The Honorable Joy A. San Buenaventura, Vice Chair, and Members
House Judiciary Committee

Re: HCR 114, HD 1 and HR 68, HD1 regarding Smoking in Public Housing

Hearing: Tuesday, April 4, 2017, 2:15 p.m., Conf Room 325

Position: Support with Amendments

PROGRESSIVE DEMOCRATS OF HAWAII supports legislation that creates **enforceable** prohibitions against smoking in and around public-housing projects, state low-income housing projects, and elder or elderly households in an effort to provide smoke-free environments for individuals and families. This indeed was the goal of Act 91 of 2014, codified as HRS section 356D-6.5.

However, it appears that these smoking prohibitions are being regularly violated, causing great physical stress to some residents, as well as continuing a public health hazard and conveying a very poor message to the public, especially to children.

The problem appears to be the reluctance of the Hawaii Public Housing Authority (HPHA) to revoke a tenant's lease because a member of the household persists in smoking in the housing or nearby areas.

While revocation of a lease is obviously draconian, there must be some way for HPHA to handle this matter in a better way. Certainly, that way is not to wipe the slate clean of any violations, when enforcement of the smoking ban is already extremely difficult, as in any other venue where smoking has been prohibited by law. It seems a reasonable goal to provide community support to smokers without compromising enforcement of the rule.

Right now, the deck continues to be stacked against non-smokers, and that situation must be remedied. Part of what needs to be done is to restore the original language of HCR 114 and HR 68, by requiring that violations not be "cleared" from a tenant's record, but rather records of such violations need to be retained for the length of a lease, and such violations

should be factored into HPHA's decisions granting or denying lease extensions or entering into new lease agreements with tenants who violate the smoking prohibition.

We respectfully suggest that you ADD a request to HPHA that it report back to the Legislature before the 2018 session with a set of enforceable policies and procedures already adopted sometime between now and then, to ensure that prohibitions on smoking are a reality and not just a goal on paper.

Smoke-free living and clean air are everyone's right, and HPHA should make this a priority. Thank you very much for the opportunity to testify on this matter.

Very truly yours,

Alan B. Burdick, Chair
Progressive Democrats of Hawaii

Reply to: Burdick808@gmail.com
486-1018

JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, April 2, 2017 8:11 PM
To: JUDtestimony
Cc: gotoart@hawaiiantel.net
Subject: Submitted testimony for HR68 on Apr 4, 2017 14:15PM
Attachments: Scott Goto-SupportOfHR68-WithAmendments.pdf

HR68

Submitted on: 4/2/2017

Testimony for JUD on Apr 4, 2017 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Goto	Individual	Comments Only	No

Comments: I support HR68 HD1 with amendments

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

Scott Goto
gotoart@hawaiiantel.net
808-941-5394

I am writing to support HR68 HD1 with amendments. Please return this measure to its original version by amending it to add back the following original language:

WHEREAS, violations of section 356D-6.5, Hawaii Revised Statutes, should be factored into the Hawaii Public Housing Authority's decisions to grant or deny lease extensions or enter into new lease agreements with violators of the smoking prohibition; now, therefore,

BE IT FURTHER RESOLVED that the Hawaii Public Housing Authority is requested to **permanently retain this documentation in a resident's record** for the Authority to consider when it evaluates whether to continue any existing lease agreement or to enter into any new lease agreement with the resident; and

Currently, violators of smoking in public housing are able to attend a smoking cessation program. After completion of said program, the violators' record will be wiped clean of their smoking infractions. This is a ridiculous policy and takes away any accountability for future violations. HPHA is merely sweeping a serious problem under the rug and taking the easy road out. Enforcement of the No Smoking Ban in public housing is difficult, but not impossible. However, allowing violators a chance to wipe their record clean will make it impossible.

As someone with loved ones in public housing who have serious health issues, it is inexcusable for HPHA to not fulfill its duty in making sure all its residents are living in a safe environment.

HCR 114, HD1

Notice of Hearing:

Date: Tuesday, April 4, 2017

Time: 2:15 pm

Dear Chair Nishimoto, Vice Chair San Buenaventura, and committee,

I am currently a dual master student at the University of Hawai'i at Mānoa. I support HCR 114, HD1 Requesting the Hawai'i Public Housing Authority to continue to document violations of the prohibition on smoking in and around public housing. I am a health care provider and I advocate for vulnerable groups (i.e. children and elderly) mentioned in this resolution. As a current resident of the state of HI, I have witnessed countless individuals smoking beside buildings and as stated in this resolution, "the Surgeon General of the United States has declared that there is not safe level of exposure to secondhand smoke and that breathing ... [it] can be dangerous...". By documenting violations, I hope this resolution will deter and educate those who smoke in and around public housing and other buildings.

Thank you,

Marc Malate

Testimony submitted by: Daria A. Fand, Consumer and Public Health Advocate, Honolulu, HI

Regarding: HCR 114, HD1/HR 68, HD1, Requesting the Hawaii Public Housing Authority to Continue to Document Violations of the Prohibition on Smoking in and Around Public Housing

For public hearing: Tuesday, April 4, 2017, 2:15 p.m., Conference Room 325

TO:

House Committee on Judiciary (JUD)
The Honorable Scott Nishimoto, Chair
The Honorable Joy San Buenaventura, Vice Chair
Honorable Members of the Committee

Position: SUPPORT WITH AMENDMENTS

I would like to thank this Committee, Chair, and Vice Chair for giving me the opportunity to testify today, in strong support of this measure, **provided that amendments are made, as I specify below. The proposed version, HD1, has so significantly compromised the needed language of the original HCR114/HR68, that passing HD1 as is would not effectuate any policy change, as was the intent of these measures. As HD1 stands, Hawaii Public Housing Authority (HPHA) would not be requested to do anything differently from what they are doing, and that defeats the purpose of these timely Resolutions.**

I testify for myself, but also on behalf the 70%+ non-smoking majority in public housing, many of whom don't testify for age, mobility, cultural, literacy, and language barrier obstacles.

Important background:

These Resolutions hark back to the no-smoking statute passed in 2014 by this forward-thinking Legislature, instituted in light of the Surgeon General's statement that no amount of exposure to secondhand smoke is safe. On the same basis, HUD mandated in 2016 all its Public Housing Authorities to go smoke-free, in recognition of this unequivocal public health hazard and the resultant required standard. In comments submitted to HUD, the State of Hawaii Department of Health (DOH), wrote in January, 2016:

The evidence is clear that secondhand smoke (SHS) is irrefutably toxic and dangerous...A bold step to mandate smoke-free policies in all public housing impresses upon the broader community that secondhand smoke exposure in the home is not tolerable.

These mandates and the Legislature have thus established the prioritization of the *protection of non-smokers*, and particularly vulnerable ones in public housing. However, the Hawaii Public Housing Authority (HPHA) adopted its own internal rule, undermining the law and rules, encouraging a climate of laxity and favoritism toward smokers.

Namely, HPHA adopted this caveat to the smoking prohibition in its lease (bold is mine):

4. If a Tenant receives only one (1) Notice of Violation of the Smoking Prohibition in one (1) year, but the Tenant or member or guest of Tenant's household who violated the Smoking Prohibition participates in and completes a smoking cessation service

program within the same year, **the HPHA will clear the Tenant's one (1) violation and shall not deem the incident as a violation** for the following year.

It should be noted there is no other lease violation that can be so “cleared” from the resident’s record, let alone with a quid pro quo. So this forgiveness caveat for violation is an aberration of the lease. **There is no statute of limitations applied to any other lease item** – why should this be an exception? There is nothing exceptionally harsh and punitive about counting all smoking violations, as long as a resident reforms after citation, to abide by the rules.

HPHA defends this rule as an incentivizing strategy to prompt smokers to quit. In theory, this seems a prudent measure to support, rather than punish residents, which is everyone’s goal. However, this policy is in practice sends a very wrong message: it implies that the incentive to quit smoking is the permission to have more chances to violate in the future. That incentive is anathema to the spirit of compliance. If a resident wants to quit smoking, the reward should be their continued good standing as a tenant and health benefits, not the latitude to break rules yet again. This amnesty is counterproductive to instilling a sense of resident accountability. Further, it prioritizes the afflictions of smokers who have a hard time complying with lease rules above the afflictions of residents exposed to inescapable toxic smoke. This is upside-down.

HPHA seems more concerned about protecting vulnerable (disabled, elder) non-compliant smokers from possible eviction than protecting its vulnerable (disabled, elder) compliant population from deadly smoke, as the law intended.

But to assuage any fears about eviction, which HPHA has grossly inflated: first, it is widely know that it is extremely hard to evict a person from public housing for ANY cause, let alone one that is not felonious. In virtually all cases, it takes years to get to eviction hearings (during which time, repeat infractions are the norm), with many “second chances” given by Management, and then, residents are usually given probation by the eviction board. Second, the fact of the matter is that it is NEARLY IMPOSSIBLE to officially cite a single smoking violation in the first place, and therefore, DE FACTO, the specter of reaching an eviction hearing by smoking violation is extremely remote. (Note that HPHA does not readmit people to public housing once evicted for any cause, so past records at that point are moot.)

As this problem plays out, I am a non-smoking resident who has repeatedly been subjected to incursion of secondhand smoke in my unit, to the great detriment of my health and existing disability; yet after 3 years of the smoking ban, I have yet to identify who is smoking in which unit, when, and furthermore, to find staff to document my complaint. Many, if not most, smokers violate covertly, and it is illegal to enter a resident’s unit without due cause, which means the deck is already stacked against me: I am subjected to hundreds of exposures (even indefinite exposures!) without anyone being cited. **This makes a single citation all the more meaningful to the violator, as a first warning. Because it’s so hard to enforce, which HPHA acknowledges, every violation should remain, and count, on the record.** Appropriate counseling and intervention can (and should) then be administered, but wiping the slate clean is bad for the enforcement arm of the policy. Furthermore, attending a smoking cessation program does not guarantee that one will quit, or that such a program would be attended sincerely. Finally, the quid pro quo applies to a resident’s guests as well, and tracking a non-resident’s success with a smoking cessation program is even more obviously problematic.

The DOH and Coalition for a Tobacco-Free Hawaii have also opposed this Administrative Rule, in the HPHA public hearings, held in 2014.

On February 28, 2014, David Sakamoto, MD, MBA, Deputy Director of Health Resources Administration at the DOH, stated:

The DOH will assist the HPHA with support for cessation services to tenants as well as staff. Cessation services; 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.

Submitted to the same public hearing by the Coalition for a Tobacco-Free Hawaii:

[The HPHA Administrative Rule], which stipulates that if a resident violates the smoking prohibitions once in a year and completes a smoking cessation program within the year, that the authority will clear the violation and not deem the incident as a violation for the following year, is problematic because it opens the door to abuse of this policy. The Coalition strongly supports smoking cessation and will work with HPHA to ensure residents have knowledge of and access to cessation programs in their community; however, we believe that this should not be written into the administrative rules."

For all these reasons -- including the safeguarding and prioritizing of the protections afforded by the smoke-free law and to keep smoking infractions on record as other lease violations are -- **I therefore strongly urge you to return this draft to its original version, as it appears in HCR114/HR68, by adding back in the following language (two paragraphs), removed in HD1:**

WHEREAS, violations of section 356D-6.5, Hawaii Revised Statutes, should be factored into the Hawaii Public Housing Authority's decisions to grant or deny lease extensions or enter into new lease agreements with violators of the smoking prohibition; now, therefore,

BE IT FURTHER RESOLVED that the Hawaii Public Housing Authority is requested to **permanently retain this documentation in a resident's record** for the Authority to consider when it evaluates whether to continue any existing lease agreement or to enter into any new lease agreement with the resident; and

Bolded language is mine, to underscore the key and operative language, and the action that HPHA would take to rectify a currently flawed, compromising, and weak Administrative policy.

PERMANENTLY RETAINING SMOKING VIOLATIONS ON A RESIDENT'S RECORD AS VALID, without any caveats, AS THE ORIGINAL RESOLUTIONS STIPULATE, would increase the likelihood of compliance, instill community respect, reinforce the law without materially jeopardizing smokers' leases, and in the process, non-smokers would be afforded the parity of protection currently lacking. It's a win-win.

This is my plea -- I urge you to pass these Resolutions amended as requested above, for the justice of all non-smokers in public housing who are still at the mercy of unabated secondhand smoke exposure.

Thank you for your consideration of this very important public health issue.