

2009 Legislative Session

Vog Measures – Background Information

H.B. No. 312, Relating to Hazardous Substances

- The elderly, young children, and individuals with respiratory ailments are more prone to the adverse effects of vog. Because vog affects everyone differently, the Department of Health urges people to be aware of their own health conditions, rather than wait to be alerted as to when medical attention should be sought, or when action should be taken to remove themselves from an area with poor air quality.
- Readings from monitors that detect sulfur dioxide (SO₂) can help individuals make more informed decisions about how to respond to current levels of vog.
- The Special Committee on Vog Effects heard concerns about the number and placement of monitors on the island of Hawaii.
- According to the University of Hawaii Center for the Study of Active Volcanoes, SO₂ levels change as vog moves away from the vents, depending on distance and weather conditions. SO₂ is a highly reactive gas, which in a relatively short period of time will change to sulfuric acid and dissipate. Therefore, SO₂ levels change quickly over time, and vary from one area to another. Monitors spread throughout the state can provide current information about SO₂ levels.
- H.B. No. 312 directs the Department of Defense to develop and implement a program to ensure that an adequate number of monitors are strategically placed throughout areas of the state where the presence of vog, SO₂, or both, reaches levels that present a danger to health and safety.

H.B. No. 313, Relating to Highways

- Guardrails along the State's highways are devices that provide added safety to the road. Guardrails are currently made of metal material that deteriorates at a faster rate due to acid rain that may result from vog.
- Deterioration of these guardrails creates a public hazard.
- Guardrails are high-cost items.
- The Department of Transportation is responsible for maintaining and inspecting the guardrails on State highways.

- H.B. No. 313 requires the Department of Transportation to conduct inspections of guardrails on the island of Hawaii on a more frequent basis, to determine the integrity of the guardrails and any problems that may have been caused by acid rain. The guardrail inspection program will allow the department to find deteriorated guardrails and prevent a potential safety hazard.
- H.B. No. 313 also requires the department to look at other possible materials and means to prevent the deterioration of guardrails due to acid rain. For example, plastic-type guardrails may not deteriorate as quickly as the metal-type, thus providing both highway safety and cost savings to the department and ultimately the State.

H.B. No. 314, Relating to Workers' Compensation

- Hawaii's workers' compensation laws fall under the jurisdiction of the Department of Labor and Industrial Relations.
- Acute effects from exposure to vog include headaches, breathing difficulties, increased susceptibility to respiratory infection, watery eyes, and sore throat. Those who, due to their work duties or work environments are exposed to higher or consistent levels of vog, may experience conditions that make work intolerable or affect their ability to work in general. Workers who spend a significant amount of time outdoors, such as construction workers and road maintenance crews, may be susceptible to vog conditions. Workers indoors may also be affected by vog if there are no filtration systems in place.
- Because the effects of vog on work duties or work environments have only become an issue relatively recently, the Department of Labor and Industrial Relations does not have guidelines on who can receive workers' compensation for what vog-related medical conditions, nor a process for filing these claims. Thus, currently, such claims may be denied.
- H.B. No. 314 requires the Department of Labor and Industrial Relations to develop and implement rules governing workers' compensation claims that are filed for vog-related medical conditions, in consultation with such parties as the Department of Health, workers' compensation insurers, healthcare providers, and healthcare insurers.

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H.B. No. 315, Relating to Volcanic Emissions

- Acute effects from exposure to vog include headaches, breathing difficulties, increased susceptibility to respiratory infection, watery eyes, and sore throat. The long-term health effects of vog are still unknown. These confirmed and unknown health risks are of particular concern for those who, due to their work duties or environments, may be exposed to higher or consistent levels of vog. This includes workers who spend a significant amount of time outdoors, such as construction workers and road maintenance crews.
- Because formal and coordinated responses to vog are still being developed, it is uncertain whether there are any work safety standards specifically tailored to address vog. There are also lingering questions:
 - Which occupations should apply work safety standards to address exposure to vog?
 - What amount of vog exposure constitutes a danger to worker safety?
- H.B. No. 315 requires the Department of Labor and Industrial Relations, in consultation with the Department of Health and the Interagency Task Force on Vog, to establish occupational safety and health standards to promote worker safety during high incidences of vog or sulfur dioxide. The Department of Labor and Industrial Relations is to identify the types of workers to be protected by these standards and determine the amount of vog or sulfur dioxide that presents a danger to these workers.

H.B. No. 316, Relating to Agriculture

- The Special Committee on Vog Effects heard testimony from the University of Hawaii College of Tropical Agriculture and Human Resources that discussed some of the harmful effects of vog on fencing and other ranching infrastructure. These fences deteriorate at a faster rate due to vog and acid rain that may result from vog.
- Tenants who lease agricultural land from the State are required to maintain fencing and other infrastructure.
- The harmful effects of vog may cause financial hardships for the tenants, who must allocate more resources for the repair and maintenance of the agricultural infrastructure.
- H.B. No. 316 provides these tenants with financial relief through a temporary reimbursement program that reimburses qualified tenants for the costs they incur in repairing and maintaining their agricultural infrastructure. The bill requires the Department of Agriculture to administer the program and to establish details on how the program will

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Vog Measures – Background Information

be implemented, including the amount of reimbursement provided to each tenant and criteria that must be met to qualify for reimbursements.

H.B. No. 317, Relating to Mobile Medical Care

- The Special Committee on Vog Effects noted health-related concerns that were raised due to the increase in vog. These concerns include:
 - The safety of catchment system water due to the possibility of lead leaching into catchment systems because of acid rain;
 - Increases in and irritation of respiratory ailments;
 - Psychological effects such as depression and anxiety;
 - Risks to particular demographics such as children and the elderly;
 - Medical services for students, faculty, and staff who have physical reactions to vog;
 - Health care for outdoor laborers regularly exposed to heavy vog conditions; and
 - Overall access to medical care.
- The areas of the state most affected by vog cover large parts of the island of Hawaii, many of which are located far from a health care facility, making health care access difficult.
- To provide the people of the southern portion of the island of Hawaii with increased access to suitable emergency and clinical medical care, especially in light of the effects of vog on health, a mobile medical van can be stationed at and assigned to the Kona Community Hospital.
- H.B. No. 317 provides for a mobile medical van to be based at Kona Community Hospital, and requires the hospital to establish a mobile medical van program to provide basic medical clinical services to the South Kona, Ka'u, and upper Puna areas of the county of Hawaii. The bill also authorizes the use of federal Homeland Security Grant Program funds for the purchase of the mobile medical van, as well as for the planning and equipment necessary to providing medical care services.

H.B. No. 318, Relating to Vog

- SO₂ in vog has been destroying or damaging flower and other crops, including protea, chrysanthemum, iris, and roses. The damage to the plants occurs by SO₂ damaging stomata on leaves, and sulfuric acid, which is created when dew combines with SO₂, damaging the flowers.

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Vog Measures – Background Information

- Certain plants appear to be the most susceptible to vog, while others appear to be protected from the effects of vog. Since certain characteristics of particular plants appear to protect that species from the effects of vog, farmers and government entities have begun to experiment with different methods that work for those species on other species of plants.
- Farmers and government entities have also suggested other methods to counteract the effects of vog, including using sodium bicarbonate or potassium bicarbonate to neutralize acid rain.
- While these strategies are promising, additional research and field studies are required to determine the short- and long-term effectiveness of each strategy and to ensure appropriate procedures are followed for each strategy. Research is also necessary to distinguish between damage caused by vog and damage caused by other problems such as plant diseases, so these strategies are not employed in vain.
- It would cause additional hardship on the farmers -- who have already suffered so much economic damage – if they were asked to continue independent research. A coordinated effort by better-equipped research facilities to conduct the appropriate studies would be more efficient and effective.
- H.B. No. 318 requires the Department of Agriculture to work with the University of Hawaii College of Tropical Agriculture and Human Resources and farmers in vog-affected areas to determine, through research, the best methods of vog treatment and find crop varieties that are most resistant to the effects of vog. The bill also sets aside a portion of the federal funds received under the Homeland Security Grant Program for this purpose.

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. In response to the recent increase in emissions
2 from Kilauea's newest vent at Halema'uma'u crater, a House
3 Special Committee on Vog Effects (Committee) was created to
4 bring together experts to examine the effects of vog on the
5 people of the State of Hawaii. The Committee held a series of
6 fact-finding meetings focusing on health and public safety,
7 agriculture, and economic impacts and tourism.

8 The purpose of this Act is to require the department of
9 labor and industrial relations to develop rules for workers'
10 compensation claims related to exposure to vog.

11 SECTION 2. The department of labor and industrial
12 relations shall develop and implement rules governing workers'
13 compensation claims that are filed for vog-related medical
14 conditions. The rules shall include, at a minimum, medical
15 conditions for which claims may be filed, a process for filing
16 these claims, and conditions under which claims may be denied.

17 In developing these rules, the department of labor and
18 industrial relations shall consult with the department of



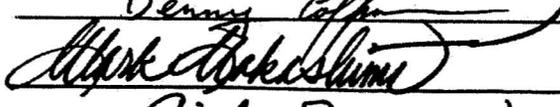
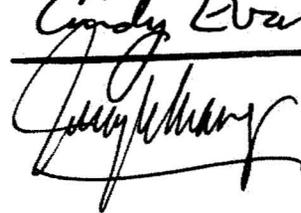
1 health, workers' compensation insurers, healthcare providers,
2 healthcare insurers, and anyone else deemed necessary by the
3 department of labor and industrial relations.

4 SECTION 3. The department of labor and industrial
5 relations shall submit a report to the legislature of its
6 findings and recommendations, including any necessary
7 legislation, on the development and implementation of rules
8 governing workers' compensation claims based on health
9 conditions related to vog exposure and shall also submit a copy
10 of their proposed rules to the legislature no later than twenty
11 days prior to the convening of the regular session of 2010.

12 SECTION 4. This Act shall take effect upon its approval.
13

INTRODUCED BY:



JAN 23 2009



Report Title:

Workers' Compensation; Vog

Description:

Requires the Department of Labor and Industrial Relations to develop rules for workers' compensation claims involving vog-related medical conditions.





STATE OF HAWAII

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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February 6, 2009

To: The Honorable Cliff Tsuji, Chair
and Members of the House Committee on Agriculture

The Honorable Ryan I. Yamane, Chair
and Members of the House Committee on Health

The Honorable Jerry L. Chang, Chair
and Members of the House Committee on Higher Education

The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor and Public Employment

The Honorable Faye P. Hanohano, Chair
and Members of the House Committee on Public Safety

The Honorable Joseph M. Souki, Chair
and Members of the House Committee on Transportation

Date: Saturday, February 7, 2009
Time: 9:00 a.m.
Place: Conference Room 325
State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

Testimony in OPPOSITION
of
H.B. 314 – Relating to Workers' Compensation

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 314 proposes that the Department of Labor and Industrial Relations
H.B. 314

("Department") develop and implement rules governing workers' compensation claims that are filed for vog-related medical conditions.

This bill also proposes that the Department submit a report twenty days prior to the start of the 2010 legislature explaining its findings and recommendations and submitting necessary legislation to develop and implement the rules governing workers' compensation claims based on health conditions related to vog exposure.

II. CURRENT LAW

Section 386-3, HRS, relating to injuries covered under the workers' compensation statute, states that an employee who suffers a personal injury either by accident arising out of and in the course of the employment or by disease proximately caused by or resulting from the nature of the employment shall be entitled to benefits under that chapter. Compensability of controverted claims is decided case by case based on whether the injury or medical condition arose out of and in the course of employment.

III. HOUSE BILL

House Bill 314 requires the Department to develop rules for workers' compensation claims related to exposure to vog. The Department opposes this bill for the following reasons:

1. Section 386-3, HRS, already allows for the review of claims relating to exposure to sulfur dioxide and other volcanic emissions which are decided on a case by case basis.
2. Compensability under section 386-3, HRS, entitled "Injuries Covered," depends on whether an injury arises out of and in the course of employment; it does not list or define specific types of injuries, or medical conditions, but rather whether or not the injury occurred within the course and scope of employment. Thus, a heart attack may or may not be covered. Similarly here, there is also no need to have a specific vog related condition listed or defined in any rule or statute for it to be reviewed under a workman's compensation claim.

For the above reasons, the Department opposes House Bill 314.

William P. Kenoi
Mayor



Diane L. Ley
Interim Deputy Director

County of Hawaii

DEPARTMENT OF RESEARCH AND DEVELOPMENT

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E-mail: chresdev@co.hawaii.hi.us

February 7, 2009

The Honorable Karl Rhoads, Chairman
And Committee Members
House Committee on Labor and Public Employment
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: House Bill 314, Relating to Workers Compensation

Dear Chairman Rhoads and Committee Members:

Thank you for this opportunity to provide comments regarding House Bill 314, relating to workers compensation. The County of Hawai'i Department of Research and Development supports this measure.

As you are likely aware, the communities of Volcano, Ka'u, and the southern portion of South Kona have experienced significant episodes of high levels of volcanic emissions since March 2008. The deterioration of the air quality has resulted in an expanded number of residents and workers experiencing a whole host of respiratory ailments, headaches and other illnesses. At times, workers are incapacitated and not able to show up for work or are sent home early and as result, their paychecks are reduced, and they have no means of compensation for a situation that is beyond their control.

If the State was able to address the negative affects of the volcanic emissions that these, otherwise hard working, employees are experiencing through workers compensation claims that would be of immense assistance.

We urge this committee to consider this initiative.

Sincerely,

Diane Ley
Interim Deputy Director



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Alison Powers
Executive Director

TESTIMONY OF TAMMY TEIXEIRA

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair

Saturday, February 7, 2009
9:00 a.m.

HB 314

Chair Rhoads, Vice Chair Yamashita and members of the Committee, my name is Tammy Teixeira, Hawaii Claims Manager for SeaBright Insurance Company. I am also a member of the Board of Directors of Hawaii Insurers Council, which I am testifying on behalf of. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** H.B. 314. The purpose of Chapter 386 is to compensate employees who suffer personal injury either by accident arising out of and in the course of employment or by disease proximately caused by or resulting from the nature of the employment. Vog is not unique to any employment and is the result of a naturally occurring phenomenon.

This bill unfairly places the burden of a natural hazard upon employers since vog is a 24/7 exposure and not incidental to employment.

We respectfully request that H.B. 314 be held.

Thank you for the opportunity to testify.

Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice-chair
Committee on Labor & Public Employment

Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice-chair
Committee on Finance

Debra A. Wong Yuen
PO Box 29, Pahala, HI 96777
dwong_yuen@yahoo.com
(808) 928-2015 - work

Saturday, February 07, 2009

Support of HB 314, Relating to Workers' Compensation; Vog

My name is Debra Wong Yuen, a twenty-three year resident of Pahala, Hawaii in the district of Ka'u, and an eighteen year employee of Pahala Public & School Library. I am testifying in support of HB 314 relating to Workers' Compensation claims involving Vog-related medical conditions, which would require the Dept. of Labor and Industrial Relations to develop rules for claims filed due to exposure to sulfur dioxide and/or Vog. Having specific rules and guidelines in place, would help a claim filed by State and County employees for a medical illness caused by the sulfur dioxide and/or Vog exposure while at work, get processed in a timely matter, instead of being stalled because there is no such guidelines.

I am currently experiencing this situation. The entire month of July 2008, I repeatedly had an asthma flare-up after being at work for a few days, from sulfur dioxide entering the building when the door opens for patrons and students entering the library. During the weekends, I would clear up because I stayed indoors in my "safe house" (equipped with AC and a Hepa air cleaner). By August 18, my asthma became very serious, and I was not able to work. My supervisor agreed that I should file a Work Comp claim.

My claim was submitted on August 18, 2008, but was immediately denied pending investigation, and may have to go through a hearing. I was told by the case worker, that they don't know if Vog is a work related illness. I was finally cleared to return to work on October 16, 2008, two months leave without pay. To date, my Work Comp claim is still pending.

If rules and guidelines were in place, I'm sure my claim would not be in limbo for this long, which has created a financial hardship for me, not getting paid for two months, and, also the attending physician not getting paid for his services for two months of medical treatments.

To help any future claims for illness caused by sulfur dioxide or Vog exposure while at work get processed in a timely matter, I urge the Committees to pass HB 314.

Mahalo for this opportunity to testify.

GUY ENRIQUES

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*Hawai'i County Council
County of Hawai'i*

07 February 02009
9:00 am Hearing
State Capitol Conference Rm 325

RE: HB 312, 313, 314, 315, 316, 317 & 318 Pertaining to Hawaii County Vog Issues

Esteemed Committee Members;

The opening of Halema'uma'u vent March 19, 2008 has lead to dramatic changes for the southern side of Hawai'i County. Toxic gasses, tephra, volcanic debris rain down upon the nearest downwind villages and at night these same hazards sometimes settle into dense streams that choke all flora and fauna in its path.

Generally speaking, about half the vog emissions that previously came from the Pu'u O'o vent further to the east, now are being spewed at Kilauea, with the addition of more dirty material than ever had been the norm for Pu'u O'o. Pu'u O'o emissions tend to defuse over the ocean or pass to higher elevations instead of enveloping the southwest district of Ka'u.

While the measures in these bills attempt to address some of the more visible issues brought by this ongoing hazard, none bring any immediate relief to the people who reside in the region.

Still, Councilman Guy Enriques supports the passage of these bills in hopes they will lead to providing the first steps toward providing better emergency and safety plans for the people of the region. In particular, Mr. Enriques hopes passage of HB 315 and HB312 will lead to data collection that will prove the pressing need for the communities of Ka'u to acquire improved public and private shelter hardening. Currently nearly every public and private building in the area cannot be enclosed (due to jealousies or permanent screen windows) to significantly reduce exposure to the hazardous fallout. Outdoor Agricultural workers face similar hazards.

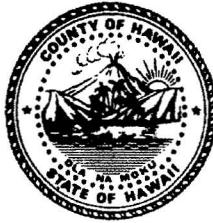
People in the Ka'u Community Hospital and within the Pahala School Campus are not shielded from the airborne attacks. At times the vog plume can be so dense visibility is reduced to less than a block.

Sincerely,

Bradley Westervelt
Legislative Asssitant District 6

EMILY NAEOLE

*Council Member
Council District 5*



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*Hawai'i County Council
County of Hawai'i*

Date: February 6, 2009
To: Bradley Westervelt, Legislative Aide
Guy Enriques 6th District
From: Emily Naeole Council Member 5th District
Re: TESTIMONY ON HAWAI'I HOUSE BILLS 113-318

Aloha mai,

I have before me, House Bills 113-118 relating to vog and sulphur dioxide it covers highway guardrail replacement, workers safety and compensation and agrarian concerns but shockingly silent on resident safety, aid and compensation.

Where is the legislation to bring aid and relief to the people of Puna? Residents on coastal Red Road, the Kalapana-Kapoho Road are closest of all communities to the ocean plumes and during Kona, interchangeable winds, or no-wind conditions; the vog can be intolerable during higher emission periods. Also it has been noted that the vog has a tendency to linger in corridors of Highway 130 near the Maku'u Hawaiian Homestead. One can see it and smell it.

To make matters worse, on Sunday, 2/01/09, the Hawai'i Herald-Tribune, published the latest report from Hawai'i Volcano Observatory (HVO) informing us that another deadly ingredient has been added to the vog. Hydrogen Sulfide (H₂S). Hydrogen sulfide is considered a broad-spectrum poison, meaning that it can poison several different systems in the body, although the nervous system is most affected. The toxicity of H₂S is comparable with that of hydrogen cyanide.

In order for this act to be a complete one I believe that the monitors should monitor H₂S emissions too.

We have had a very rough time in the Kehena area in December and January. Everyone I know in Seaview subdivision is suffering ill effects of one degree or another. We have had two deaths and much illness in this small neighborhood.

According to the Pāhoia Fire Chief all procedures come through Civil Defense. At this time the fire station in Pāhoia use the SO₂ monitoring device only when "it looks" vogy at the fire station. He then, and only then, sends out someone to take SO₂ readings at C.D. authorized sites.

Everyone knows looks can be deceiving we are talking about poisons in parts per million terms. It should not be left to people at fire stations.

This is totally unacceptable. Sometimes the vog is thick in Pāhoa but it is very light in the Kehena are, and visa-a-versa. At this time of heavy volcanic emissions, SO2 readings should be taken several times a day in all locations.

ā

Nowhere in Puna Makai is there any place to evacuate to. Emergency shelters can be created quickly by converting designated schools and community center areas to airtight rooms with vinyl Velcro windows and portable air filter and air conditioning machines. Funding is available through FEMA and Homeland Security Grant programs.

The coconut wireless is saying that Hawai'i is the next Katrina. Is this life threatening situation being allowed to escalate in order to create enough panic to justify the evacuation of the whole island? That will then be turned over to the military/industrial complex? I ask you to consider this testimony when discussing the solution to this problem and very important Act.

I would ask that the Legislature take serious the thought to include Lower Puna in all of these bills.

Lua lima,

Emily I. Naeole
Council Member 5th District

EIN/rh

Ka'u Farm Bureau
PO Box 1109
Naalehu, Hawai'i 96772
808-929-9550

February 5, 2009

RE: Testimony in favor

HB 312

HB 313

HB 314

HB 315

HB 316

HB 317

HB 318

Aloha esteemed Representatives,

I am writing in support of the aforementioned bills.

The Ka'u district, in particular, has been severely impacted, beginning in March of 2008, by the adverse effects of VOG. These impacts continue through the present day. Many farms are in peril. Some have already failed. As a community, we are grappling with how to deal with the various issues that have resulted from increased emissions from Halema'uma'u. The Ka'u Farm Bureau is pleased that our local representatives have acted so swiftly and decisively to mitigate the impacts of this natural phenomenon.

All things have been affected by VOG, albeit to varying degrees, with the most fragile organisms being the most severely affected. This most welcome intervention by government on this most urgent issue speaks directly to public health, safety and welfare and fulfills the most important role of Government- to help ensure the safety of its citizens.

This legislative package goes one step further to help farmers and ranchers deal with the economic impacts caused by VOG and protects the health and well-being of the workforce.

I applaud the proactive approach demonstrated by all levels of government- County, State, Federal, and indeed, the participation by the citizenry to adapt to this problem.

Please join me in supporting the aforementioned measures.

Many thanks,



Chris Manfredi
President