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**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Tuesday, February 6, 2018
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 2537, RELATING TO ASSOCIATIONS.

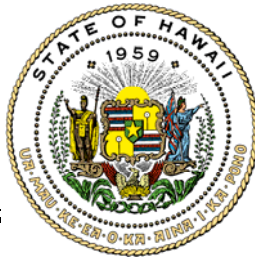
TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE
COMMITTEES:

The Department of Commerce and Consumer Affairs (“DCCA” or “Department”) appreciates the opportunity to testify on H.B. 2537, Relating to Associations. My name is Catherine Awakuni Colón, and I am the Director of the Department (“Director”). DCCA takes no position on this bill.

This measure proposes requires the Legislative Auditor to conduct a study, including a cost-benefit analysis, on establishing an agency within the Department to regulate homeowners associations and to submit a report to the Legislature.

The Department does not enforce Hawaii Revised Statutes chapter 421J, Planned Community Associations, but notes its provisions may already address some of the issues that the Auditor is being asked to review.

Thank you for the opportunity to testify on this measure. I am happy to answer any questions the Committee may have.



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair

H.B. NO. 2537, RELATING TO ASSOCIATIONS

Hearing: Tuesday, February 6, 2018, 2:00 p.m.

The Office of the Auditor has **no position** regarding H.B. No.2537, which requires us to conduct a study on the necessity and feasibility of establishing an agency within the department of commerce and consumer affairs to provide general regulatory oversight of homeowners' associations. **However, we have concerns about our ability to conduct the study required by H.B. No. 2537.**

H.B. No. 2537 requires us to conduct a wide-ranging study to determine the most effective and cost-efficient means to establish an agency that would, among other things, provide consumer protection services for homeowners; establish accountability standards for the selection of vendors by homeowners' associations; and enforce statutes, regulations, and rules governing homeowners associations through penalties and legal action. Additionally, this bill would require us to conduct a cost-benefit analysis of establishing such an agency, including an assessment of initial start-up costs, year-to-year operational costs, and any other incidental agency and program maintenance costs.

We believe the work called for by H.B. No. 2537 is beyond our expertise and will require us to procure a consultant to assist us in performing the study. We suggest an appropriation of \$150,000 for the purpose of retaining a subject matter consultant to assist us on the substantive issues, and additional staff as necessary, should the bill be passed by the committee.

Thank you for considering our testimony related to H.B. No. 2537.



**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 2, 2018

Rep. Roy Takumi, Chair
Rep. Linda Ichiyama, Vice-Chair
House Committee on Consumer Protection & Commerce

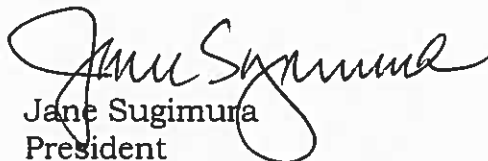
Re: Testimony in re
HB2537 RELATING TO ASSOCIATIONS
Hearing: Tues., Feb. 6, 2018, 2 p.m., Conf. Rm. #329

Chair Takumi, Vice-Chair Ichiyama and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA). This organization represents the interests of condominium and community association members.

HCCA does not support this bill as written. We suggest that this bill be (i) combined with HB2034, which is seeking dispute resolution remedies for unregistered homeowner associations and (ii) amended to establish a task force of stakeholders to investigate whether HRS Chapter 421J should be expanded to include these homeowners associations, whether DCCA should have regulatory oversight over these homeowner associations and to establish a comprehensive re-codification of Chapter 421J that will incorporate applicable provisions from HRS Chapter 514B that would apply to those homeowner association. The DCCA should take the lead in that task force and if such a group is established, HCCA will volunteer for that task force.

Thank you for the opportunity to testify on this matter.


Jane Sugimura
President

HB-2537

Submitted on: 2/3/2018 5:06:23 PM

Testimony for CPC on 2/6/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:



February 4, 2018

VIA WEB TRANSMITTAL

Committee on Consumer Protection & Commerce
House of Representatives, the 29th Legislature
Regular Session of 2018

Re: Testimony in Opposition of HB2537

Dear Chair Takumi, Vice Chair Ichiyama and Committee members:

I am a Member of the Community Associations Institute (“CAI”) Legislative Action Committee, Hawaii Chapter (“CAI LAC”). CAI is an international membership organization dedicated to building better communities. With more than 35,000 members worldwide, CAI provides information, education and resources to the homeowner volunteers who govern communities and the professionals who support them. CAI members include association board members and other homeowner leaders, community managers, association management firms and other professionals who provide products and services to associations.

The Hawaii Chapter of the Community Associations Institute serves the educational, business, and networking needs of community associations in Hawaii. Members include condominium, cooperative, and planned community associations as well as those who provide services and products to these associations. The Hawaii Chapter has almost 500 members. This includes about 50 business & nearly 100 Associations that represent thousands of homeowners. The Hawaii Chapter is one of 56 Community Associations Institute chapters in the United States.

Chapter 421J governs homeowners associations in which the voting membership is made up of ten or more parcel owners or their proxies, or a combination thereof; and assessments may be imposed that, if unpaid, may become a lien on the parcel. See HRS § 421J-2. This is a new law passed in 2017. Chapter 421J includes various provisions on association project documents, fiscal matters, including but not limited to assessment issues, and dispute resolution. There has not been enough time for us to see whether subjecting such homeowners to the guidance and regulation

under Chapter 421J would be adequate and sufficient to help facilitate the operation of homeowners associations. It is premature at this point to conduct the proposed study.

HB2537 does not include a definition of "homeowners association". HB2537 also does not provide any information on why there is an actual need for the proposed study. Unlike condominium associations, homeowners associations, are not registered entities with the Department of Commerce and Consumer Affairs ("DCCA"). One or a few subdivisions' problems will be more efficiently dealt with by the private parties through our judicial system, instead of wasting tax payers' money to form an unnecessary governmental agency to micromanage the whole industry. It would also be unfair and arbitrary to use governmental funds to specifically help resolve disputes for homeowners associations where all other private property owners facing issues of easements or neighbor disputes need to pay for their own legal bills to resolve private property disputes. At the very least, there should be solid empirical data in support of the necessity to appoint an auditor or form a study group using public funds. We do not want to repeat the mistake of condo court on this matter.

Compared with condominium associations and planned community associations, homeowners associations are the type of common interest communities that have much lesser common interest components. Similar as planned community associations, homeowners associations are also formed by private restrictive covenants running with the land. This is distinguished from a condominium that is a creation of statutes. Planned community associations have been in existence and operating well under Chapter 421J of the Hawaii Revised Statutes without any oversight or regulation by any DCCA agency for many years. Certain tasks contemplated for the proposed agency with DCCA are unrealistic and infeasible, e.g. (1) establishing accountability standards and benchmarks for selection of vendors (That should be a business judgment made by the directors and officers of an association who need to fulfill their fiduciary duties according to such association's specific needs and budget); (2) enforcing regulations and rules of an homeowners association (This sounds like to have the DCCA agency step in to run the association on behalf of private homeowners); (3) auditing Bylaws' compliance with applicable law (Unfortunately we have not achieved this for registered condominium associations).

Last but not the least, CAI has conducted comprehensive study on the effectiveness of ombudsman program for common interest communities established in other states in the United States. According to the study, the existing ombudsman offices face several obstacles in meeting its statutory objectives. Among these obstacles are structural issues, the lack of mutuality in the ombudsman process, added cost/complexity for homeowners dispute resolution, lack of education of boards and homeowners, the lack of need for such programs and ore effective alternatives to expanding state control over locally elected community association boards. The study results are summarized in a memorandum available online at no cost to the public at

Committee on Consumer Protection & Commerce

February 4, 2018

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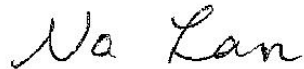
https://www.caionline.org/Advocacy/StateAdvocacy/PriorityIssues/Ombudsman/Documents/Ombudsman_Report.pdf.

CAI LAC opposes HB2537 based on the above stated reasons. In the remote event the legislature approves funding to form a study group on this issue, CAI LAC respectfully requests that such a study group should include representatives from CAI LAC.

Thank you!

Sincerely yours,

Community Associations Institute Legislative Action Committee, Hawaii Chapter

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

By Its Member
Na Lan

HB-2537

Submitted on: 2/3/2018 11:20:25 AM

Testimony for CPC on 2/6/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip Nerney	CAI	Oppose	No

Comments:

I am testifying as an individual.

Planned community associations are already subject to Chapter 421J, which suffices. The term "homeowners associations" should not be used if the intention is to address planned community associations.

Planned community associations are contractual in nature and should not be subject to the same level of regulation applicable to condominiums.

HB-2537

Submitted on: 2/5/2018 11:11:21 AM

Testimony for CPC on 2/6/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Oppose	Yes

Comments:

There are no justification to establish a new governmental office for homeowner associations. We support the testimony of the Hawaii Council of Community Associations encouraging a task force to examine the condominium law and adopt its appropriate provisions for homeowner associations by expanding HRS 421J.

HB-2537

Submitted on: 2/3/2018 11:16:50 AM

Testimony for CPC on 2/6/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura		Support	No

Comments:

This is long overdue, since the condo industry's claims that self governance works and does not need oversight is totally meritless, given the corruption, graft and outright disregard of owner rights to due process we've witnessed in disputes. I hope that genuine investigative procedures of owner grievances will be established with this office.