

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Tuesday, March 1, 2022
2:00 PM**

State Capitol, Conference Room 325. Via Videoconference

**In consideration of
HOUSE BILL 1757, HOUSE DRAFT 1
RELATING TO PLANNED COMMUNITY ASSOCIATIONS**

House Bill 1757, House Draft 1, proposes to amend Chapter 421J, Hawaii Revised Statutes (HRS), by adding a new section prohibiting any planned community association from prohibiting an owner or a sub-association from utilizing xeriscaping. Voids any provision in an association document that prohibits xeriscaping. **The Department of Land and Natural Resources (Department) supports this measure.**

The Department's Commission on Water Resource Management supports water conservation and water use efficiency through its Water Resource Protection Plan and its Hawai'i Water Conservation Plan. Outdoor water use makes up around one-half of a homeowner's water consumption. Xeriscaping is a proven landscape practice that reduces irrigation water use by eliminating plantings or planting drought-tolerant or climate appropriate species. Xeriscaping can also be aesthetically pleasing by matching the appropriate native plant species with the local climate and environment. The Honolulu Board of Water Supply, Maui Department of Water Supply and County of Hawai'i Department of Water Supply all promote xeriscaping and have provided such information on their respective websites. The Landscape Irrigation Council of Hawai'i promotes xeriscaping and other irrigation best practices in its Landscape Irrigation Conservation Best Management Practices handbook, available online here: <https://www.hawaiiscape.com/publications/>.

Thank you for the opportunity to comment on this measure.

HB-1757-HD-1

Submitted on: 2/28/2022 9:21:49 AM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Neal Fujii	DLNR-CWRM	Support	Yes

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843
www.boardofwatersupply.com



March 1, 2022

RICK BLANGIARDI, MAYOR

BRYAN P. ANDAYA, Chair
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NA'ALEHU ANTHONY

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DAWN B. SZEWCZYK, P.E., Ex-Officio

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.
Deputy Manager and Chief Engineer

The Honorable Mark M. Nakashima, Chair
and Members
Committee on Judiciary and Hawaiian Affairs
House of Representatives
Hawaii State Capitol, Room 325
Honolulu, Hawaii 96813

LATE

Dear Chair Nakashima and Members:

SUBJECT: House Bill 1757, HD1: Relating to Planned Community Associations

The Honolulu Board of Water Supply (BWS) supports the intent of House Bill (HB) 1757, House Draft (HD) 1. This bill adds a new section to chapter 421J, Hawaii Revised Statutes (HRS) prohibiting any planned community association from preventing xeriscaping by its members or owners. While the BWS cannot speak to the prohibitions mentioned in this measure, we can speak to the advantages of xeriscaping.

The BWS supports water conservation and water reuse efficiency efforts. In 1989, the BWS established the Halawa Xeriscaping Garden as a way to educate Oahu residents on ways to save water in lawns, gardens, and landscaped areas. There are several kinds of plants and grasses that need less irrigation, as well as the variety of approaches that use water more efficiently in the garden. These approaches include efficient irrigation techniques, soil improvement/mulching, cultural practices, and landscaping ideas that will provide for attractive drought-tolerant gardens and landscapes.

With the challenges we face now, we must find solutions to protect our environment and water resources. Population growth, climate change, contamination, drought, emerging regulations and decreasing recharge to groundwater aquifers are considerable threats, so we need innovative solutions that can incentivize behavior to conserve and protect our water resources.

The BWS is working hard to preserve and protect our most essential resource – water. Through the Water Sensible program, launched in April 2018, Oahu residents and businesses have the opportunity to save water and money. The overall water savings has been over 43 million gallons saved per year based on over 6,900 rebates that have

The Honorable Mark M. Nakashima, Chair
and Members
March 1, 2022
Page 2

been provided for efficient clothes washing machines, rain barrels, and weather-based irrigation controllers and other efficiency measures.

As a result of the ongoing water contamination crisis stemming from the U.S. Department of the Navy (Navy) Red Hill Bulk Fuel Storage Facility (Red Hill) fuel release led to the BWS decision to immediately shut down one of its largest water sources on Oahu – Halawa Shaft, along with its Halawa Well and Aiea Well as a precaution to protect our irreplaceable ground water resources and our customers from the imminent peril posed by the Red Hill fuel tanks. During the summer months, it is likely that BWS will ask residents to voluntarily conserve water. Water usage during that time will determine if more action is needed.

Thank you for the opportunity to testify in support of HB 1757, HD1.

Very truly yours,



ERNEST Y.W. LAU, P.E.
Manager and Chief Engineer

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

February 25, 2022

Hearing Date: Tuesday, March 1, 2022

Time: 2:00 p.m.

Place: VIA VIDEOCONFERENCE

Committee on Judiciary & Hawaiian Affairs
House of Representatives, the 31st Legislature
Regular Session of 2022

Testimony Regarding HB 1757, HD1 (HSCR240-22)

Chair Nakashima and Members of the Committee,

My name is Elaine Panlilio, and I am testifying on behalf of the Legislative Action Committee of the Community Associations Institute, Hawaii Chapter (“CAI - LAC”). We represent the condominium and community association industry.

CAI – LAC respectfully **opposes** HB 1757 because a bill allowing unit owners and sub-associations from utilizing xeriscaped lawns without the approval of the association’s governing documents undermines the associations’ ability to self-govern.

Thank you for this opportunity to testify.

Sincerely yours,

/s/ Elaine Panlilio

Elaine Panlilio
CAI LAC Hawaii

HB-1757-HD-1

Submitted on: 2/27/2022 4:22:59 PM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Chandra Kanemaru	CCV2 Board	Oppose	No

Comments:

Dear Representative Nakamura, Chair, Representative Matayoshi, Vice Chair, and members of the Committee on Judiciary and Hawaiian Affairs:

1. **respectfully OPPOSE H.B. 1757, H.D.1.** House Bill 1757, H.D.1 seeks to forbid planned community associations (“associations”) from preventing the use of xeriscaping in separately owned or occupied units within planned communities. The practical effect of this Bill is that it will invalidate the covenants, conditions, restrictions and rules on landscaping within planned communities and preclude associations from regulating the appearance of landscaping. All community association landscaping standards will be essentially rendered illegal, landscaping will deteriorate, communities may become highly undesirable aesthetically, and property values may drop. Although sustainable landscaping should be encouraged, the harm caused by this Bill will exceed any potential benefits.

Well maintained, attractive landscaping and a pleasant environment are essential to the quality of life in any community. Aesthetics is a key component in the desirability of a neighborhood and the value of its individual homes. I acknowledge that conserving fresh, clean water is important, and that homeowners and communities can reduce water use significantly by adopting sustainable landscaping practices that reduce water consumption and the demands on public or private water supplies. However, planned community associations are founded on the core principle of self-governance and this Bill is not consistent with that principle as it precludes community associations from regulating landscaping and aesthetics, one of the most important aspects of the planned community.

This Bill will almost certainly be abused by owners of units in planned communities who choose not to maintain landscaping on their units. The definition of “xeriscaping” in the Bill is highly problematic, as it would allow any owner to stop caring for landscaping and calling the weed infestation or bare dirt, “xeriscaping.” Community associations will be precluded from enforcing landscaping requirements on units.

While I would not object to legislation that authorizes associations to enact reasonable rules and regulations concerning landscaping requirements, community associations must maintain the ability to adopt and enforce landscaping standards and covenants. Water-use policies must allow community associations to maintain the level of aesthetics valued by the community. The quality of landscaping can have a substantial impact on the value of properties.

I oppose Bill 1757, H.D.1 as it will invalidate provisions of governing documents which serve to regulate the aesthetics of planned communities, which are so critical to the use and enjoyment of units in planned communities and the enhancement of property values.

For the foregoing reasons, I respectfully OPPOSE H.B. 1757, H.D.1 and strongly urge your Committee not to pass this measure.

Well maintained, attractive landscaping and a pleasant environment are essential to the quality of life in any community. Aesthetics is a key component in the desirability of a neighborhood and the value of its individual homes.

Respectfully submitted,

Chandra R.N Kanemaru

Country Club Village 2, Board Secretary

Neighborhood Board 18, Board Secretary

HB-1757-HD-1

Submitted on: 2/28/2022 9:22:08 AM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Primrose Leong-Nakamoto	Lualualei 1 Association	Oppose	No

Comments:

Dear Representative Nakamura, Chair, Representative Matayoshi, Vice Chair, and members of the Committee on Judiciary and Hawaiian Affairs:

I respectfully OPPOSE H.B. 1757, H.D.1. House Bill 1757, H.D.1 seeks to forbid planned community associations (“associations”) from preventing the use of xeriscaping in separately owned or occupied units within planned communities. The practical effect of this Bill is that it will invalidate the covenants, conditions, restrictions and rules on landscaping within planned communities and preclude associations from regulating the appearance of landscaping. All community association landscaping standards will be essentially rendered illegal, landscaping will deteriorate, communities may become highly undesirable aesthetically, and property values may drop. Although sustainable landscaping should be encouraged, the harm caused by this Bill will exceed any potential benefits.

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Respectfully submitted,

Primrose Leong-Nakamoto

HB-1757-HD-1

Submitted on: 2/28/2022 9:23:20 AM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Laurence Sussman	Villages of Kapolei Association	Oppose	No

Comments:

Dear Representative Nakamura, Chair, Representative Matayoshi, Vice Chair, and members of the Committee on Consumer Protection & Commerce:

1. **respectfully OPPOSE H.B. 1757, H.D.1.** House Bill 1757, H.D.1 seeks to forbid planned community associations (“associations”) from preventing the use of xeriscaping in separately owned or occupied units within planned communities. The practical effect of this Bill is that it will invalidate the covenants, conditions, restrictions and rules on landscaping within planned communities and preclude associations from regulating the appearance of landscaping. All community association landscaping standards will be essentially rendered illegal, landscaping will deteriorate, communities may become highly undesirable aesthetically, and property values may drop. Although sustainable landscaping should be encouraged, the harm caused by this Bill will exceed any potential benefits.

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Respectfully submitted,

Laurence Sussman

General Manager of Villages of Kapolei Association

91-1111 Kama’Aha Loop

Kapolei, HI 96707

Also a resident of Ewa by Gentry Homes

HB-1757-HD-1

Submitted on: 2/28/2022 9:27:29 AM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mark McKellar	Law Offices of Mark K. McKellar, LLC	Oppose	No

Comments:

Dear Representative Nakamura, Chair, Representative Matayoshi, Vice Chair, and members of the Committee on Judiciary and Hawaiian Affairs:

I respectfully OPPOSE H.B. 1757, H.D.1. House Bill 1757, H.D.1 seeks to forbid planned community associations (“associations”) from preventing the use of xeriscaping in separately owned or occupied units within planned communities. The practical effect of this Bill is that it will invalidate the covenants, conditions, restrictions and rules on landscaping within planned communities and preclude associations from regulating the appearance of landscaping. All community association landscaping standards will be essentially rendered illegal, landscaping will deteriorate, communities may become highly undesirable aesthetically, and property values may drop. Although sustainable landscaping should be encouraged, the harm caused by this Bill will exceed any potential benefits.

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Respectfully submitted,

Mark McKellar

LATE



Hawai'i's voice for wildlife
Kō Hawai'i o nā holoholona lōhiu

**Before the House Committee on
Judiciary and Hawaiian Affairs**

**Tuesday, March 1, 2022
2:00pm**

State Capitol, Conference Room 325, Via Videoconference

**In consideration of
House Bill 1757 HD1
RELATING TO PLANNED COMMUNITY ASSOCIATIONS**

Conservation Council For Hawaii supports HB 1757 HD1.

Our island's natural resources are precious, in particular our freshwater resources. All homeowners should enjoy the freedom to protect our water resources through responsible landscape methods such as xeriscape. Homeowner associations should not place restrictions on residents in managed communities that are not conducive to responsible practices that protect our water resources.

Thank you for the opportunity to support HB 1757 HD1.

HB-1757-HD-1

Submitted on: 2/26/2022 5:16:57 PM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kathy Kosec	Individual	Oppose	No

Comments:

As an owner in a community association, I have significant concern regarding the looseness of this bill's intent. Xeriscape is a great way to conserve water and energy. But without clear definition of xeriscape, the likelihood of aging owners and non-residents who own individually being able to maintain their xeriscape will decline. I am 73 years old and know whereof I speak. Rules and standards need to be put in place as a component of this bill or it should not be passed. That way management of the xeriscape can revert to the HOA to manage if those rules and standards are not being met.

Thank you for your service to our community.

Kathy Kosec RN

HB-1757-HD-1

Submitted on: 2/26/2022 6:12:46 PM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Anne Anderson	Individual	Oppose	No

Comments:

Dear Representative Nakamura, Chair, Representative Matayoshi, Vice Chair, and members of the Committee on Judiciary and Hawaiian Affairs:

I respectfully OPPOSE H.B. 1757, H.D.1. House Bill 1757, H.D.1 seeks to forbid planned community associations (“associations”) from preventing the use of xeriscaping in separately owned or occupied units within planned communities. The practical effect of this Bill is that it will invalidate the covenants, conditions, restrictions and rules on landscaping within planned communities and preclude associations from regulating the appearance of landscaping. All community association landscaping standards will be essentially rendered illegal, landscaping will deteriorate, communities may become highly undesirable aesthetically, and property values may drop. Although sustainable landscaping should be encouraged, the harm caused by this Bill will exceed any potential benefits.

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I oppose Bill 1757, H.D.1 as it will invalidate provisions of governing documents which serve to regulate the aesthetics of planned communities, which are so critical to the use and enjoyment of units in planned communities and the enhancement of property values.

For the foregoing reasons, I respectfully OPPOSE H.B. 1757, H.D.1 and strongly urge your Committee not to pass this measure.

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Respectfully submitted,

M. Anne Anderson

HB-1757-HD-1

Submitted on: 2/26/2022 6:35:45 PM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
mary freeman	Individual	Oppose	No

Comments:

Dear Representative Nakamura, Chair, Representative Matayoshi, Vice Chair, and members of the Committee on Judiciary and Hawaiian Affairs:

I respectfully OPPOSE H.B. 1757, H.D.1. House Bill 1757, H.D.1 seeks to forbid planned community associations (“associations”) from preventing the use of xeriscaping in separately owned or occupied units within planned communities. The practical effect of this Bill is that it will invalidate the covenants, conditions, restrictions and rules on landscaping within planned communities and preclude associations from regulating the appearance of landscaping. All community association landscaping standards will be essentially rendered illegal, landscaping will deteriorate, communities may become highly undesirable aesthetically, and property values may drop. Although sustainable landscaping should be encouraged, the harm caused by this Bill will exceed any potential benefits.

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Respectfully submitted,

Mary S Freeman

Ewa Beach

HB-1757-HD-1

Submitted on: 2/26/2022 10:59:46 PM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Julie Wassel	Individual	Oppose	No

Comments:

Dear Representative Nakamura, Chair, Representative Matayoshi, Vice Chair, and members of the Committee on Judiciary and Hawaiian Affairs:

I respectfully OPPOSE H.B. 1757, H.D.1. House Bill 1757, H.D.1 seeks to forbid planned community associations (“associations”) from preventing the use of xeriscaping in separately owned or occupied units within planned communities. The practical effect of this Bill is that it will invalidate the covenants, conditions, restrictions and rules on landscaping within planned communities and preclude associations from regulating the appearance of landscaping. All community association landscaping standards will be essentially rendered illegal, landscaping will deteriorate, communities may become highly undesirable aesthetically, and property values may drop. Although sustainable landscaping should be encouraged, the harm caused by this Bill will exceed any potential benefits.

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Respectfully submitted,

Julie Wassel

HB-1757-HD-1

Submitted on: 2/27/2022 2:04:09 PM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Steve Glanstein	Individual	Oppose	Yes

Comments:

I respectfully oppose H.B. 1757, H.D.1. House Bill 1757, H.D.1 seeks to **forbid** Planned Community Associations (“Associations”) from preventing the use of xeriscaping in separately owned or occupied units within planned communities. The practical effect of this Bill is that it will invalidate the covenants, conditions, restrictions, and rules on landscaping within planned communities and preclude associations from regulating the appearance of landscaping.

All community association landscaping standards will be essentially rendered illegal, landscaping will deteriorate, communities may become highly undesirable aesthetically, and property values may drop. Although sustainable landscaping should be encouraged, the harm caused by this Bill exceeds any hypothetical benefits.

People move into Associations because they’re attractive, the properties maintain their values, and there is a sense of consistency and community.

This bill would destroy a piece of those property rights by legislation with **no compensation** to the disaffected homeowners.

The bill gives a blank check to a **vocal minority of owners** who choose not to maintain landscaping in their units. It appears to be a legislative answer to this vocal minority that wants to get their way **notwithstanding the effect on their fellow neighbors or the entire community.**

This bill will be another legislative way of creating “Legislated Community Associations” instead of “Planned Community Associations.”

It substitutes the legislature’s judgment for the judgment of tens of thousands of owners who live in the Associations without any compelling justification.

Please defer or defeat this Bill.

HB-1757-HD-1

Submitted on: 2/27/2022 4:46:54 PM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Carol Walker	Individual	Oppose	No

Comments:

Dear Representative Nakamura, Chair, Representative Matayoshi, Vice Chair, and members of the Committee on Judiciary and Hawaiian Affairs:

1. **respectfully OPPOSE H.B. 1757, H.D.1.** House Bill 1757, H.D.1 seeks to forbid planned community associations (“associations”) from preventing the use of xeriscaping in separately owned or occupied units within planned communities. The practical effect of this Bill is that it will invalidate the covenants, conditions, restrictions and rules on landscaping within planned communities and preclude associations from regulating the appearance of landscaping. All community association landscaping standards will be essentially rendered illegal, landscaping will deteriorate, communities may become highly undesirable aesthetically, and property values may drop. Although sustainable landscaping should be encouraged, the harm caused by this Bill will exceed any potential benefits.

Well maintained, attractive landscaping and a pleasant environment are essential to the quality of life in any community. Aesthetics is a key component in the desirability of a neighborhood and the value of its individual homes. I acknowledge that conserving fresh, clean water is important, and that homeowners and communities can reduce water use significantly by adopting sustainable landscaping practices that reduce water consumption and the demands on public or private water supplies. However, planned community associations are founded on the core principle of self-governance and this Bill is not consistent with that principle as it precludes community associations from regulating landscaping and aesthetics, one of the most important aspects of the planned community.

This Bill will almost certainly be abused by owners of units in planned communities who choose not to maintain landscaping on their units. The definition of “xeriscaping” in the Bill is highly problematic, as it would allow any owner to stop caring for landscaping and calling the weed infestation or bare dirt, “xeriscaping.” Community associations will be precluded from enforcing landscaping requirements on units.

While I would not object to legislation that authorizes associations to enact reasonable rules and regulations concerning landscaping requirements, community associations must maintain the ability to adopt and enforce landscaping standards and covenants. Water-use policies must allow community associations to maintain the level of aesthetics valued by the community. The quality of landscaping can have a substantial impact on the value of properties.

I oppose Bill 1757, H.D.1 as it will invalidate provisions of governing documents which serve to regulate the aesthetics of planned communities, which are so critical to the use and enjoyment of units in planned communities and the enhancement of property values.

For the foregoing reasons, I respectfully OPPOSE H.B. 1757, H.D.1 and strongly urge your Committee not to pass this measure.

Well maintained, attractive landscaping and a pleasant environment are essential to the quality of life in any community. Aesthetics is a key component in the desirability of a neighborhood and the value of its individual homes.

Respectfully submitted,

Carol Walker

HB-1757-HD-1

Submitted on: 2/28/2022 7:03:23 AM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lance S. Fujisaki	Individual	Oppose	No

Comments:

Dear Representative Nakamura, Chair, Representative Matayoshi, Vice Chair, and members of the Committee on Judiciary and Hawaiian Affairs:

I respectfully OPPOSE H.B. 1757, H.D.1. House Bill 1757, H.D.1 seeks to forbid planned community associations (“associations”) from preventing the use of xeriscaping in separately owned or occupied units within planned communities. The practical effect of this Bill is that it will invalidate the covenants, conditions, restrictions and rules on landscaping within planned communities and preclude associations from regulating the appearance of landscaping. All community association landscaping standards will be essentially rendered illegal, landscaping will deteriorate, communities may become highly undesirable aesthetically, and property values may drop. Although sustainable landscaping should be encouraged, the harm caused by this Bill will exceed any potential benefits.

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Respectfully submitted,

Lance Fujisaki

HB-1757-HD-1

Submitted on: 2/28/2022 8:56:10 AM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Paul A. Ireland Koftinow	Individual	Oppose	No

Comments:

Dear Representative Nakashima, Chair, Representative Matayoshi, Vice Chair, and members of the Committee on Judiciary and Hawaiian Affairs:

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Respectfully submitted,

Paul A. Ireland Koftinow

HB-1757-HD-1

Submitted on: 2/28/2022 9:47:31 AM

Testimony for JHA on 3/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Philip Nerney	Individual	Oppose	No

Comments:

HB 1757 is an example of inappropriate micromanagement of private, self-governing associations. It is framed in absolute terms that would be inappropriate even if there were some justification for a prohibition of this sort in some circumstances. Imposing a law of general application broadly, to all planned community associations, the circumstances of which vary, is not indicated with respect to this matter.