

HB-2280-HD-2

Submitted on: 3/12/2022 12:05:07 AM

Testimony for AEN on 3/14/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jennifer Azuma Chrupalyk	Testifying for Administrator of Mahiku A'o Mai Food Security Services	Support	Written Testimony Only

Comments:

Thank you. Nobody should be prevented from growing what they eat, as long as the gardener understands that they cannot control what chemicals that the neighbors use, and as long as the grower considers that neighbors might not want a tree hanging over their fenceline. We have a larger demographic than ever moving into the islands and the culture of America is to keep your yard in your own yard and they are pretty adamant about that. Just letting you know ahead of time because the culture here is different. Some of my fruit trees overlap my neighbor's yard and they benefit from free fruit. But the neighbor on the other side is the kind that I wrote about above and has a nasty reputation for victimizing the neighbors when he does not approve of how your yard affects his views. *"I bought this property because I liked the views and your tree is blocking my view."* That neighbor from another state must have purchased the airspace when he purchased his property - a privilege that none of the local neighbors have. And the guy sends authorities to other people's property to control their yard or personal land development.

HB-2280-HD-2

Submitted on: 3/13/2022 10:05:08 AM

Testimony for AEN on 3/14/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Na Lan	Testifying for Community Associations Institute LAC	Oppose	Written Testimony Only

Comments:

The Community Associations Institute Legislative Action Committee (“CAI LAC”) opposes HB2280 to the extent it does not comply with associations’ existing covenants running with the land.

Planned communities are created by a recorded declaration placing restrictions and obligations on the owners of the real properties within such communities, which creates restrictive covenants running with the land. The planned community associations are obligated to enforce such covenants, i.e., legal agreements that are binding upon all current owners and future buyers of the properties, as title transfers incorporate such covenants as encumbrances. All unit owners within such communities have legal standing to compel for enforcement of such restrictive covenant agreements, and they also have to adhere to state and federal laws.

CAI LAC is concerned about the constitutionality of the proposed legislation as applicable to existing planned communities. Under the Contract Clause, no state shall pass law impairing the obligations of private contracts.

Depending on the underlying zoning of the land certain planned communities are situated and whether there are master landscape plans incorporated in existing covenants, HB2280 will be problematic for certain associations, may lead to disputes on covenants enforcement and impact property values. It could also lead to neighbor disputes in connection of application of pesticide in residential area , certain fertilizer that has strong smells, and rodent control issues.

Both the declarations for planned community associations and Chapter 421J provide options for members of such associations to amend restrictive covenants with approval by a certain percentage of membership. Individual planned communities should reserve their own discretion on whether personal agriculture should be allowed or encouraged within their own communities.

CAI LAC believes the current amended language cannot adequately address the concerns stated above, and at the very minimum, CAI LAC proposes the following amendments (deletion marked by strikethrough, addition marked in bold italics):

“SECTION 1. Chapter 421J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§421J- Personal agriculture allowed. (a) Notwithstanding any provision of an association document to the contrary, no No association shall prohibit or unreasonably restrict the use of a unit owner's enclosed yard area for personal agriculture, provided that such use is not in violation of the association's existing master landscape plan or other restrictive covenants applicable to such unit.

(b) This section shall apply only to enclosed yard areas that are designated for the exclusive use of the unit owner.

(c) This section shall not:

(1) Apply to provisions in an association document that impose reasonable restrictions on the use of a unit owner's enclosed yard area for personal agriculture; or

(2) Prohibit an association from applying rules and regulations requiring that dead plant material and weeds, with the exception of straw, mulch, compost, and other organic materials intended to encourage vegetation and retention of moisture in the soil, be regularly cleared from the enclosed yard area.

(d) For purposes of this section:

"Personal agriculture" means a use of land where an individual cultivates edible plant crops for personal use or donation.

"Reasonable restrictions" means restrictions that do not significantly increase the cost of engaging in personal agriculture or significantly decrease its efficiency."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2050."

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March 13, 2022

Chair Mike Gabbard
Vice Chair Clarence K. Nishihara
Committee of Agriculture and Environment
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB 2280 HD2 OPPOSE

Dear Chair Gabbard, Vice Chair Nishihara and Committee Members:

HB 2280 HD2 nominally facilitates small-scale agriculture. Functionally, however, it would substantially interfere with the governance of planned community associations.

Leaving aside that the bill reflects unwarranted micromanagement of private, self-governing associations, it would substantially interfere with existing contractual relationships and consumer expectations. Thus, it may be constitutionally infirm, and it would certainly harm many consumers of residential housing.

Even if it is assumed that associations can impose "reasonable restrictions", the bill would cause potentially expensive and divisive disputes over what is reasonable. Increased policing will be necessary.

Can dangerous chemical fertilizers be used? Or does the legislature only intend organic gardens?

Can smelly manure be used? Are unwilling neighbors obliged to close the windows to their homes to enable agricultural use of land zoned for a residential purpose?

Some militant gardener will surely argue that "use of land where an individual cultivates edible plant crops" allows for a chicken or two. HB 2280 HD2 does not specifically preclude such an argument.

The foregoing risk is not theoretical. HRS §205-4.5(a)(3), includes as permissible use within an agricultural district: "Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use".

Chair Mike Gabbard
Vice Chair Clarence K. Nishihara
March 13, 2022
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Among other things, this bill effectively makes a zoning decision. Such decisions are best made in a different setting.

Most likely, this bill would largely produce unsightly yards, serious conflict and unwarranted governance expense, far more so than edible plant crops.

Please do not pass this bill.

Very truly yours,

/s/ Philip Nerney

Philip S. Nerney

HB-2280-HD-2

Submitted on: 3/13/2022 2:37:29 PM

Testimony for AEN on 3/14/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Testifying for Associa	Oppose	Written Testimony Only

Comments:

Although this may sound good on the surface, this creates many conditions unfair to neighbors with enforcement difficult. People buy into an association knowing the standards and agreeing to comply. I see this Bill creating a neighbor vs. neighbor atmosphere. There are too many adverse loopholes that some may try to take advantage of. There has been no evidence of any widespread community demand for this Bill. We oppose this Bill.

HB-2280-HD-2

Submitted on: 3/13/2022 10:47:41 PM

Testimony for AEN on 3/14/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mark R. Hagadone, Ph.D., FACFE	Testifying for Hawaii Legislative Action Committee Community Associations Institute	Oppose	Written Testimony Only

Comments:

Chair Mike Gabbard

Vice Chair Clarence K. Nishihara

Committee of Agriculture and Environment

415 South Beretania Street

Honolulu, Hawaii 96813

Re: HB 2280 HD2 OPPOSE

Dear Chair Gabbard, Vice Chair Nishihara and Committee Members:

We believe HB 2280 will ultimately interfere with the traditional governance of planned community Associations. It will result in micromanaging self-governing Associations and interfere with current contractual relationships operating in good will within these Associations.

We believe one unintended consequence of this this Bill as currently proposed will be the development of divisive disputes over “reasonable restrictions” and its definition within Associations. This will drive up Association expenses as increased policing will likely become necessary.

We believe this Bill effectively makes an arbitrary and capricious zoning decision which could result in unanticipated and destructive effects such as, repugnant yards, the use of strong smelling chemical fertilizers, noisy and difficult to control livestock including chickens in quiet residential settings and “edible plant crops” potentially including medicinal herbs, including cannabis . We feel this Bill as proposed, would generate unwarranted conflict, increase governance expense by forcing Associations to police the arbitrary zoning decisions resulting from its enforcement and interfere with Association governance decisions which are best made under more thoughtful and site-specific circumstances.

Please do not pass this bill.

Very Truly Yours,

Mark R. Hagadone

Member

Hawaii Legislation Action Committee