

February 7, 2023

The Honorable David A. Tarnas, Chair

House Committee on Judiciary & Hawaiian Affairs
State Capitol, Conference Room 325 & Videoconference

RE: House Bill 538, Relating to Judiciary & Hawaiian Affairs

HEARING: Tuesday, February 7, 2023, at 2:00 p.m.

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its over 11,000 members. HAR respectfully **opposes** House Bill 538 which authorizes planning or permitting agencies to enter privately owned residential real property, under certain specified conditions, to address violations of county zoning ordinances, rules, or regulations. Specifies that a property owner who receives a notice of violation and fails to remediate the violation within the county planning or permitting agency's specified time frame shall be fined a minimum of \$1,000 per day, subject to a lien if the fines exceed \$5,000, and subject to foreclosure proceedings if the property owner does not satisfy the lien within thirty days of notice and commence remediation of the violation.

Hawai'i REALTORS® appreciates the intent of this bill; however we are concerned with this measure as it allows planning or permitting agencies to enter a private residence without a search warrant and without the owner's permission or consent. As such, there may be constitutional issues that arise under the 4th Amendment of the United States Constitution, which provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

For the foregoing reasons, Hawai'i REALTORS® opposes this measure. Mahalo for the opportunity to testify.



The House of Representatives
The Thirty-Second Legislature
Regular Session of 2023

To: Committee on Judiciary & Hawaiian Affairs

Date: February 7, 2023

Place: Via Video Conference
Conference Room 325
Hawaii State Capitol
415 South Beretania Street

RE: HB 538 – Relating to Residential Real Property

Rep. David A; Tarnas, Chair, Rep. Gregg Takayama, Vice Chair and the Representatives of the Committee On Judiciary & Hawaiian Affairs

RBOAA opposes HB 538. This Bill would violate the Fourth Amendment of the United States Constitution.

This Bill allows a planning department employee to enter a private residence without a search warrant and without the owner's permission or consent. If someone were suspected of a criminal act, there are more constitutional protections for that person than this Bill provides for just ordinary citizens in their homes. This Bill allows the planning department to walk into anyone's home to look for "unreasonable amounts of trash."

This Bill does not conform to the 4th Amendment of the US Constitution, State of Hawaii's Statutes for police conduct while serving a search warrant, Hawaii constitution search and seizure, and U.S. Supreme Court case law.

This Bill would also jeopardize the lives of those dwelling in the home as well as those entering into someone else's home without permission or legal warrant signed by a Judge. It is likely that a stranger entering into a private residence is going to be thought to be an intruder or robber. The occupant of the dwelling may believe that a home invasion is happening. This Bill does not take into account such real life consequences.

RBOAA respectfully requests that this Bill be deferred.

Sincerely,

Alicia Humiston, President
Rentals by Owner Awareness Association

HB-538

Submitted on: 2/6/2023 9:51:49 AM

Testimony for JHA on 2/7/2023 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Victor K. Ramos | Individual | Oppose | Written Testimony Only |

Comments:

OPPOSE: "without consent or cooperation" Tricky proposed bill that could be exploited.

HB-538

Submitted on: 2/6/2023 1:17:34 PM

Testimony for JHA on 2/7/2023 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| John Chang | Individual | Oppose | Written Testimony Only |

Comments:

We oppose HB538 for the following reasons:

Illegal Search of Private Home:

The United States Constitution and the State of Hawaii Constitution prohibits searches of homes without a warrant. This Bill does not conform to Federal or State law.

U.S. Constitution Fourth Amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. "

Hawaii State Constitution states: Article 1 Section 7 ----"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted. "

Excessive Fines:

The U.S. Constitution and Hawaii State Constitution prohibit excessive fines.

Hawaii State Constitution states: Article 1 Section 12 ----"Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted ... "

This Bill provides for warrantless searches, \$1000 a day fines and a pathway to filing a lien within 5 days (\$5000) and then foreclosure. In other words, a person's home would be in the process of foreclosure within 5 days. This seems extreme for a code violation. Bear in mind also, that a long term renter may dwell in the home and the actual owner may not even be aware of a code violation.

The planning department should not possess the authority to conduct a warrantless search in a private home that even the police are not authorized under Federal and State law to conduct without a warrant.

We respectfully request that this Bill be deferred.