

HB
302

A BILL FOR AN ACT

RELATING TO HOMEOWNERS ASSOCIATIONS.

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

- 1 SECTION 1. (a) The auditor shall conduct a study on the
2 necessity and feasibility of establishing an agency within the
3 department of commerce and consumer affairs to provide general
4 regulatory oversight of homeowners associations. As part of the
5 study, the auditor shall determine the most effective and cost
6 efficient means to establish an agency that would, at a minimum:
- 7 (1) Focus on the provision of consumer protection services
8 for homeowners, including the proper use of fees paid
9 to an association;
- 10 (2) Establish accountability standards and benchmarks for
11 the selection of vendors by a homeowners association
12 to provide agreed upon services, as well as for the
13 vendors used by the association to provide these
14 services;
- 15 (3) Facilitate mediation, arbitration, and dispute
16 resolution services in cases of noncompliance or
17 neglect of appropriate levels of performance,



H.B. NO. 302

- 1 including economic performance, for agreed upon
2 services between the homeowner and the homeowners
3 association or vendors procured by the association;
- 4 (4) Enforce any statutes, regulations, and administrative
5 rules governing homeowners associations, including the
6 enforcement of penalties and determination of
7 liabilities, as appropriate;
- 8 (5) Have the authority to compel compliance with any
9 statute, regulation, and administrative rule governing
10 homeowners associations through legal actions;
- 11 (6) Recommend, to the director of commerce and consumer
12 affairs, the establishment of any additional penalties
13 the agency deems necessary to enforce any statute,
14 regulation, or administrative rule governing
15 homeowners associations;
- 16 (7) Establish educational programs for homeowners and
17 disseminate information to homeowners on a homeowner's
18 rights, including means of challenging the
19 appropriateness of fees paid versus services provided
20 and the availability of mediation and dispute
21 resolution; and



H.B. NO. 302

1 (8) Establish regular reporting requirements to the
 2 legislature including agency evaluations, metrics, and
 3 fiscal accountability.

4 (b) As part of the study under subsection (a), the auditor
 5 shall perform a cost benefit analysis on the establishment of an
 6 agency as provided in subsection (a), including initial start-up
 7 costs, year-to-year operational costs, and any other incidental
 8 agency and program maintenance costs.

9 (c) The auditor shall submit a report of its findings and
 10 recommendations, including any proposed legislation, to the
 11 legislature no later than twenty days prior to the convening of
 12 the regular session of 2020.

13 SECTION 2. This Act shall take effect upon its approval.

14

INTRODUCED BY:

J. J. K. Cook
M. Agui
R. Jones

JAN 18 2019



H.B. NO. 302

Report Title:

Homeowners Associations; Consumer Protection; Agency Establishment; Study; Appropriation

Description:

Requires the Auditor to conduct a study, including a cost analysis, on the necessity and feasibility of establishing an agency within the Department of Commerce and Consumer Affairs to regulate homeowners associations, and to submit a report of its progress to the Legislature prior to the 2020 Regular Session.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





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

H.B. NO. 302, RELATING TO HOMEOWNERS ASSOCIATIONS

Hearing: Tuesday, February 5, 2019, 2:00 p.m.

The Office of the Auditor has no position regarding the merits of the study required in H.B. No. 302. **However, we suggest that we are not the appropriate agency to perform the study.**

H.B. No. 302 requires us to conduct a wide-ranging study about the necessity and feasibility of establishing an agency within the department of commerce and consumer affairs to provide general regulatory oversight of homeowners associations. Specifically, the bill requires us 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 requires that we 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.

Our audit staff is skilled in assessing a department or program's performance, meaning we evaluate the department or program's operations against appropriate criteria, such as relevant statutes, administrative rules, policies, procedures, and best practices. While we offer recommendations intended to improve the department or program's operations, those recommendations are based on and intended to address our audit findings. The other types of work that we are mandated to perform, such as "Sunrise Analyses" of proposed regulatory schemes for unregulated professions/vocations and impact assessments of proposed mandatory health insurance coverage, similarly involve assessing proposed legislation against statutory criteria.

However, the study contemplated by this bill requires different skills and expertise from those required to audit a department or agency's operations. For instance, we do not establish regulatory bodies, such as the agency proposed to regulate homeowners associations and, therefore, have no understanding of the most effective and cost-efficient means to create that agency; we are unaware of the issues associated with homeowner associations that the Legislature may be attempting to address through regulation of those associations.

We suggest that another agency – such as the Department of Commerce and Consumer Affairs or the Legislative Reference Bureau – may be better suited to perform the requested study and

House Committee on Consumer Protection & Commerce

H.B. No. 302

Page 2

recommend that the bill be amended to reflect the more appropriately suited agency to perform the work.

Thank you for considering our testimony related to H.B. No. 302.



February 1, 2019

Honorable Roy M. Takumi
Honorable Linda Ichiyama
Committee on Consumer Protection & Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB302/OPPOSITION

Dear Chair Takumi, Vice Chair Ichiyama and Committee Members:

The Community Associations Institute, Legislative Action Committee ("CAI LAC") hereby submits this testimony in opposition to HB302.

CAI LAC believes that state governmental micromanagement and adding agencies using all taxpayers' money are not a reasonable solution to perceived problems in a few community associations. Painting all community associations with the same broad brush creates an unnecessary, intrusive burden on the overwhelming majority of community associations that are administering their duties and providing services to their owner-members in an efficient, customer friendly and cost conscious manner.

Legislators should not be expected to rewrite private parties' deeds and restrictive covenants aimed to preserve property values and rights of self-determination by owners who made their own financial decision to invest in a community association property and elect willing and able volunteers who typically have a substantial vested interest in their own communities.

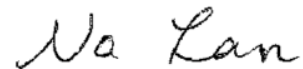
There has been no sufficient solid evidence establishing that a new layer of governmental agency specially devoted to private community associations is in need or will be the magic cure of the alleged problem. Based on the past track records of a similar agency -- the abolished "condo court", CAI LAC believes the proposed study is likely to be a waste of legislative and

Honorable Roy M. Takumi
Honorable Linda Ichiyama
Committee on Consumer Protection & Commerce
February 1, 2019
Page 2

governmental resources.

CAI LAC represents the condominium and community associations industry, and respectfully request the Committee to reject or defer HB302. Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in cursive script that reads "Na Lan".

Na Lan

HB-302

Submitted on: 1/31/2019 11:32:21 AM

Testimony for CPC on 2/5/2019 2:00:00 PM

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

Comments:

This is an unnecessary expense. Revisions to HRS 421J is all that is needed, not more government agencies.

HB-302

Submitted on: 1/31/2019 1:06:33 PM

Testimony for CPC on 2/5/2019 2:00:00 PM

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

Comments:

HB-302

Submitted on: 1/31/2019 9:42:58 PM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dale	Individual	Support	No

Comments:

This bill is long overdue and should be passed. Too often Boards bully and harass owners with impunity, because they can. The state has a raft of rules in 514B which is does not enforce, rendering them 'voluntary'. Associations function like medieval entities with the Board functioning like a 'Royal Court' and of course there is an inner circle of members pandering to it Royal Sovereign (the Board President). Frivolous fines are routine, often unfair, and are no more than a means to harass people. Could give you examples, but, that would be like writing a book.

HB-302

Submitted on: 2/2/2019 9:36:21 PM

Testimony for CPC on 2/5/2019 2:00:00 PM

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

Comments:

I support this measure, because it is high time a regulatory division for condominium issues be established in DCCA. However, the time for audits and studies is over, as this approach has already been done in previous years, and the incidences of property owner abuse by industry principals, contractors boards and the like are increasing.

Since owners ultimately pay for the services of contractors hired by boards to carry out association repairs, collections and management, the owners **ARE** consumers who should likely be represented not by private attorneys, a prohibitively costly recommendation by current DCCA staff, but by a state agency division in DCCA, staffed by professionals trained to objectively handle condo owner complaints and grievances.

HB-302

Submitted on: 2/4/2019 1:12:45 PM

Testimony for CPC on 2/5/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Fernandez	Individual	Support	No

Comments: