

The CAI Hawaii Legislative Action Committee
Presents the

2022 Legislative Update



*Review and Analysis of
Legislative Enactments
and Trends*

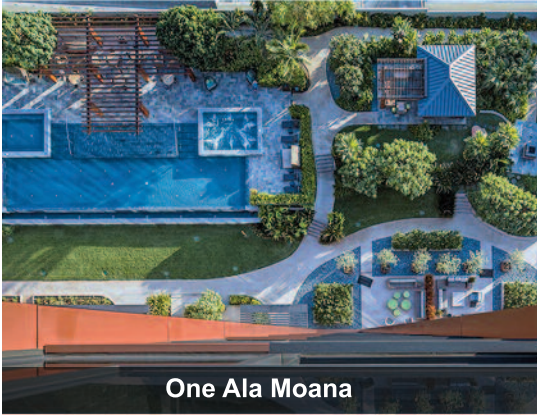


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- Robert Wilkinson, Kona by the Sea President

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WELCOME TO THE 2022 CAI LEGISLATIVE UPDATE REPORT

The 2022 legislative session produced several bills that specifically target the operation and governance of condominiums and planned community associations. Other bills referenced herein are broad enough to affect associations even though not targeted to them. Some bills are mentioned even though the subject matter may only concern some people or may simply reflect a focus of legislative attention.

The themes of climate, transportation and energy independence are of increasing emphasis at the legislature. Associations will be increasingly affected by that emphasis.

Attacks on association self-governance persist. Efforts to limit whom a condominium owner is allowed to give a proxy to were revived. As in years past, this was recognized to be an unwarranted effort to skew election outcomes.

A bill that would have effectively crippled condominium covenant enforcement passed the Senate. It did not pass the House.

This is a matter of particular concern since the entire legislature, House and Senate, is up for election this year. The 2023 legislature could be quite different from the current one.

You may wish to carefully consider the outlook of candidates on association-related matters when you vote. Stated differently, you may wish to vote as if your home and investment depend on the election outcome.

Legislative action can profoundly (and sometimes adversely) affect you personally and financially. Vigilance is required whenever the legislature is in session, to inform policy makers of the likely consequences of various policy proposals.

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HB 2272 HD1 SD1 CD1

This bill affects condominiums and has multiple features.

- Clarifies that a condominium declaration may be amended by the vote or written consent of owners holding at least 67% of the common interest, unless the declaration is amended by the unit owners to require a higher percentage.
- Requires a developer's public report to contain a breakdown of annual maintenance fees, which includes the annual reserve contributions based on a reserve study.
- Clarifies time/date requirements for petitions to amend bylaws. Owners must sign and date the petition, which must be submitted within 120 days of the earliest signature.
- Electronic voting devices may be connected to the internet if the device uses a form of encryption comparable to that used for secured internet web browsers and the reference address or internet address of the electronic voting device must be part of the printed audit trail.
- Electronic meetings and electronic, machine or mail voting may be authorized by the board in its sole discretion (notwithstanding governing document provisions): 1) during a state of emergency; 2) within 60 days after authorized voting notice has been sent (regardless of whether an emergency remains in effect); and 3) whenever owners approve in advance by consent or at a meeting. Reasonable measures to verify owner identity are required. Mail voting includes mail/courier/electronic transmission of whole reproduction of original.
- Minutes of association meetings shall be approved at the next regular meeting or by the board. The change is that board approval does not have to occur "within sixty days after the meeting[.]"
- Liberalizes board's opportunity to adopt meeting rules, provided notice is given.

- Requires annual budget to include estimated replacement reserves; provided that the reserve study shall be reviewed by an independent reserve study preparer; provided further that the reserve study shall be reviewed or updated at least every three years.

NOTE: This requirement may be difficult to comply with due to shortage of undefined independent reserve study preparers.

- Requires a "cash flow plan" to be a projection over a minimum term of thirty (not twenty) years.

SB 2685 SD2 HD1 CD1

This bill amends Chapter 421J (**planned community associations**).

"No association shall prohibit or unreasonably restrict the use of a unit owner's enclosed yard area for personal agriculture; provided that the use is not in violation of the association's existing master plan or other restrictive covenants applicable to the unit."

- Applies to exclusive use areas
- Does not apply to provisions in an association document that impose "reasonable restrictions" or to rules/regulations "requiring that dead plant material and weeds," be "regularly cleared from the enclosed yard area."

NOTE: Associations may wish to review existing documents, and amend as needed to prevent nuisances.

- Sustainable agriculture is becoming an important issue. See, e.g., SB 2990 SD1 HD1 CD1, referred to hereafter.

SB 2685 SD2 HD1 CD1

This bill amends Chapter 421J (**planned community associations**).

If the bylaws provide for cumulative voting, the "candidates receiving the highest number of votes" shall be elected and given the longest term.

Cumulative voting not allowed unless provided for in association documents. A director elected by cumulative voting may be removed with or without cause (subject to restrictions). Restrictions include:

- Members may remove directors elected by members. Replacement director will be elected for the remainder of the removed director's term. The board may fill vacancies to serve until the next member meeting, if a replacement is not elected by the members at the meeting where the director is removed.

- Directors elected by a class may only be removed by the members of that class.
- Director may not be removed if votes against removal sufficient to elect the director (when cumulative voting applies).

"Association documents" means the articles of incorporation or other document creating the association, if any, the bylaws of the association, the declaration or similar organizational documents and any exhibits thereto, any rules related to use of common areas, architectural control, maintenance of units, restrictions on the use of units, or payment of money as a regular assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas, as well as any amendments made to the foregoing documents.

- Removal of a director elected by members may occur at a meeting if: a) the board recommends removal; or b) a member petition is signed by owners of 100 units/25% of units (whichever is less) is submitted within seven days after the posting of a notice of intent to distribute proxies that includes the election of directors and within 120 days of the earliest signature.
- The proposed removal shall be included in the meeting notice if conditions met.
- Director may be removed by board for missing specified number of meetings stated in association documents at start of term.
- Other requirements.

The board shall post notice of intent to distribute not

of association meeting 21 days in advance of meeting if association funds will not be used to distribute proxies.

SB 2002 SD2 HD2

Adds largely non-substantive verbiage regarding so-called "assistance animals," defined to mean:

(b) For purposes of this section, "assistance animal" means an animal that is needed to perform disability-related work, services, or tasks for the benefit of a person with a disability or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. "Assistance animals" may include but are not limited to service animals, therapy animals, comfort animals, or emotional support animals that may have formal training or may be untrained and may include species other than dogs."

The word "needed" is accorded little significance in practice. HRS §515-3(a)(9), describing a discriminatory practice, is amended to read:

[(9)] To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation; provided that if reasonable accommodations include the use of an assistance animal, reasonable restrictions may be imposed; provided further that if the disability is not readily apparent, an owner or other person engaging in a real estate transaction may request information that verifies that the person has a disability, defined as a

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physical or mental impairment that substantially limits a major life activity. An owner or other person engaging in a real estate transaction shall not request medical records or access to health care providers, and shall not inquire as to the diagnosis, nature, or severity of the person's disability. If the disability-related need for an assistance animal is not readily apparent, an owner or other person engaging in a real estate transaction may request verification that the assistance animal is needed to alleviate one or more symptoms of the person's disability. Verification may be provided by a letter or other communication from the person's treating health care professional, mental health professional, or social worker. Possession of a vest or other distinguishing animal garment, tag, or registration documents that are

commonly purchased online and purporting to identify an animal as a service animal or assistance animal shall not constitute valid verification;

This changes little because, in practice, “possession of a vest or other distinguishing animal garment, tag, or registration documents that are commonly purchased online” was already worthless.

Many other bills affect associations without specifically amending Chapters 421J or 514B. They include:

HB 980 HD1 SD2

“The purpose of this Act is to broaden the department of human services’ right of entry into a vulnerable adult’s premises without a warrant for an investigation of caregiver neglect, self-neglect, or physical abuse.”



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Keep this in mind when someone appears to be at risk. Recall that HRS §514B-142 already offers protection for association representatives in relation to reports on those “who may require services and assistance to maintain independent living[.]”

HB 1412 HD2 SD1 CD1, HB 1413 HD2 SD1 CD1, HB 1414 HD1 SD1 CD1

These bills address abandoned vehicles by: 1) requiring “counties to provide a minimum distance a vehicle must be moved within a specified timeframe after a vehicle is initially inspected for abandonment to avoid an official classification of abandonment” (HB 1412 HD2 SD1 CD1); 2) allowing counties to “require payment of outstanding charges and fines relating to the disposition of an abandoned vehicle before issuing a certificate of registration or completing transfer of ownership” and to enable

suspension, revocation or non-renewal of driver’s licenses for persons with outstanding charges and fines related to abandoned vehicles (HB 1413 HD2 SD1 CD1); and 3) making “a person who is the registered owner of a vehicle that was deemed abandoned or derelict subject to a tiered fine system.” (HB 1414 HD1 SD1 CD1).

HB 1567 HD1 SD1 CD1

The purpose of this bill is to: “Eliminate the use of monetary bail and require defendants to be released on their own recognizance for traffic offenses, violations, nonviolent petty misdemeanor offenses, nonviolent misdemeanor offenses, or nonviolent class C felony offenses”. This bill, if not vetoed, may have a substantial adverse effect on public safety.



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HB 1800 HD2 SD2 CD2

“The legislature finds that climate change is the overriding challenge of the twenty-first century.”
The purpose of this bill is to:

- (1) Establish a goal for the statewide greenhouse gas emissions limit to be at least fifty per cent below 2005 levels by 2030; and
- (2) Require and appropriate funds for the Hawaii state energy office to conduct a study to determine Hawaii’s pathway to decarbonization and identify challenges, opportunities, and actions that will be needed to achieve those goals.

Without limitation, the energy office shall: “Include measures to reduce emissions from electricity, including accelerating the adoption of clean energy and improving energy efficiency for residential, commercial, and government users[.]”

Note the reference to “residential” users. This means you.

HB 1991 HD2 SD2 CD1

Requires HPD to establish a publicly available stolen bicycle database and prohibits the sale of bicycles listed on the database..

HB 2075 HD1 SD1 CD

This bill requires the physical inspection of firearms under certain circumstances.

HB 2089 HD1 SD2

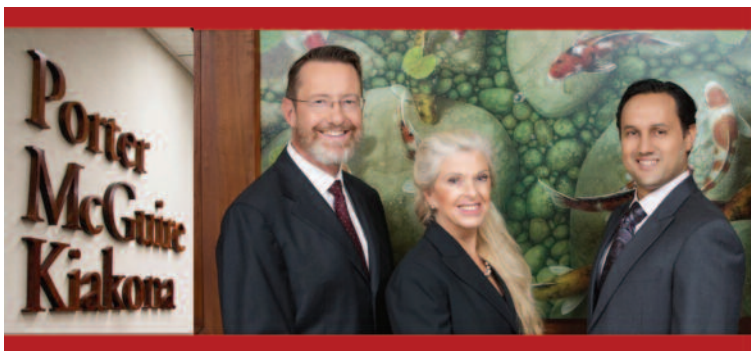
The legislature finds that “the need to reduce fossil fuel emissions globally to avoid the worst impacts of climate change has become increasingly urgent.” This bill, among other things: “Require[s] electric utility companies to track and annually report data and trends on customer retention and attrition to further inform the calculation of the renewable portfolio standards.”

HB 2197 HD1 SD1 CD1

“In order to guard the safety and welfare of the State’s citizens, and particularly residential neighborhoods, illegal gambling houses cannot be tolerated any longer and existing laws relating to the promotion of gambling need to be strengthened to deter and punish those who put the State’s citizens at risk.” Amends gambling statutes and increases penalties.

HB 2213 HD1 SD1

The purpose of this bill is to establish the misdemeanor criminal offense of theft of mail, under state law. Mail is defined to mean “an envelope, a package, a bag, or a box that:” is left for or delivered by “a common carrier or delivery service.”



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HB 2422 HD1 SD1

“Since the 1990s, the legislature, as a matter of public policy, has made a concerted effort to reduce and prevent domestic violence in the State.” The purpose of this bill “is to clarify that a family court must impose a sentence for domestic violence intervention, with or without probation, for violations of restraining orders, orders for protection, and abuse of family or household members.

HB 2495 HD1 SD1

HRS §378-2.2(a) is amended to provide that: “No employer shall enter into or require an employee to enter into a nondisclosure agreement that prevents the employee from disclosing or discussing sexual harassment or sexual assault occurring in the workplace, at work-related events, between employees, or between an employer and an employee.”

SB 206 SD2 HD1 CD1

“The legislature believes that renters who participate in housing assistance programs, such as section 8, should have an equal opportunity to find housing and should not be discriminated against because their source of income includes funds from housing assistance programs.” Thus, a new chapter is to be added to the Hawaii Revised Statutes, establishing that it is an unlawful practice to discriminate on that basis, effective May 1, 2023.

The bill contains exceptions. Among other things, “Landlords with ownership of not more than four dwelling units in the State” are exempt, as is the “rental of any housing accommodation in a building that contains housing accommodations for not more than two families living independently of each other if the owner or lessor resides in one of” them. The rental of up to four rooms in a place the owner or lessor lives is also exempt.

SB 2008 SD1 HD2 CD1

This bill is premised on the determination that: “Further legislation is now needed to reduce impediments to state and county condemnation of private lanes so that the predicament of private lanes does not endure.” In particular:

A privately owned highway, road, alley, street, way, lane, bikeway, or bridge that has been condemned by the State or county pursuant to subsection (c) may be accorded flexibility in design, including limitations of liability, pursuant to section 264-20, in consideration of the unique nature and limitations associated with property dedicated or condemned to public use.

SB 2082

This bill adds abuse of family or household members to those felonies that qualify for repeat offender sentencing; meaning that convicted persons “shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole[.]”

SB 2162 SD1 HD1 CD1

This bill provides that: “Any federal election not held on the date of a regularly scheduled primary or general election and any special election for a vacant seat on a county council shall be conducted by ranked-choice voting.”

Ranked-choice voting is an election method that provides voters the ability to rank candidates in order of choice, as a voter's first, second, and later choices. Tabulation begins with each voter's first choice vote. If a candidate receives a majority of votes, that candidate wins. If no candidate receives a majority of votes, the candidate with the fewest

votes is eliminated and each vote counting for that candidate counts for the voter's second choice in the subsequent round. That process repeats by eliminating the candidate with the fewest votes and counting each vote for the highest-ranked remaining candidate in the next round, until two candidates remain, and the candidate with the most votes wins.

This is a trend to notice. It does not presently relate to private associations but increased use in other contexts might, over time, raise the question as to its suitability in the association context

SB 2295 SD2 HD2 CD1

A new chapter is to be added to the Hawaii Revised Statutes, pursuant to which: “The department of transportation shall plan for sea level rise based upon the latest science, estimates, and recommendations of the Hawaii climate change mitigation and adaptation commission in all future or amended transportation projects.” This applies to all highway, harbor and airport projects, which suggests that sea level rise is a real thing.

SB 2298 SD2 HD1 CD1

The legislature finds that “Wage theft accounts for \$15,000,000,000 stolen each year, which totals more than all stolen money from physical burglaries in the United States combined.” The purpose of this bill “is to increase the penalty for employers who fail to pay the wages of their employees in accordance with chapter 387, Hawaii Revised Statutes, the wage and hour law, and chapter 388, Hawaii Revised Statutes, governing payment of wages and other compensation, to a class C felony.” Among other things, criminal liability will attach to “any officer of any corporation who knowingly permits the corporation to violate this chapter[.]”

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SB 2379 SD2 HD2 CD1

This bill provides that “the special enforcement section” of the department of taxation may

- (1) Examine any sector of the State's economy;
- (2) Initiate civil investigations to ensure that each taxpayer pays all taxes that the taxpayer is required to pay; and
- (3) Use enforcement and education to deter and prevent non-compliance with state taxation laws.

SB 2382 SD1 HD1 CD1

This bill provides that “A cabaret license shall not be issued for any premises located within an apartment mixed use subprecinct within a special

improvement or special district in which the economy is primarily based on tourism.”

SB 2474 SD2 HD1 CD1

This bill primarily provides that: “The public utilities commission shall contract with a qualified consultant to conduct a study on the accessibility of Hawaii’s electric system and procedures for interconnection to Hawaii’s electric system, including but not limited to the timeliness and costs of interconnection.”

SB 2511 SD2 HD2 CD1

This bill:

Expands the renewable energy technologies income tax credit to include firm renewable energy systems and long-duration renewable energy storage systems. Caps



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the amount of credit that may be claimed by a tax payer and the total amount of tax credits for certain firm renewable energy systems and long-duration renewable energy storage systems that may be claimed in a taxable year. Specifies that the income tax credit is available for eligible systems that are placed in service before 1/1/2046.

“The tax credit may be claimed for every eligible renewable energy technology system that is installed and placed in service in the State by a taxpayer during the taxable year.”

SB 2720 SD2 HD2 CD1

SECTION 1. The legislature finds that climate change caused by carbon emissions from burning fossil fuels poses a serious threat to the economic well-being, public health, natural resources, and environment of Hawaii. The State has committed to eliminating fossil fuels from the electricity and ground transportation sectors, abiding by the Paris Climate Accord's goal to limit the amount of

global warming to less than 1.5 degrees Celsius, and achieving negative carbon emissions for Hawaii by 2045. The legislature also finds that meeting the State's clean energy goals and commitments necessitates the rapid transition to zero-emission vehicles that utilize local, renewable energy sources.

The legislature further finds that the number of electric vehicles in Hawaii is rising. As more electric vehicles come to market, the ranges of electric vehicles increase and the cost of electric vehicles decrease. The legislature also notes that the number of registered electric vehicles in Hawaii increased more than thirty per cent during 2021, while the number of registered gasoline-powered vehicles has decreased.

The legislature believes that while there is a growing interest in electric vehicles among Hawaii residents, the lack of adequate vehicle charging infrastructure presents a key barrier to widespread adoption. Many Hawaii residents, such as renters and other residents living in apartment buildings and other multi-family dwellings, lack access to electric vehicle charging stations at home and at work because a vast majority of parking facilities in the State lack electric vehicle charging stations. In 2019, recognizing that a lack of charging infrastructure remains a barrier to more widespread adoption of electric



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vehicles, the legislature established an electric vehicle charging system rebate program to incentivize the installation of publicly available charging stations and charging stations that serve multiple tenants, employees, or customers, or electric vehicle fleets.

The legislature additionally finds that the continuation of the electric vehicle charging system rebate program is a critical component of the State's efforts to transition off of fossil fuels and achieve a carbon-negative economy by 2045. Furthermore, the program should work in tandem with, and not duplicate, any available federal funding to further the goal of expanding the network of electric vehicle charging systems in the State. To ensure that the program is keeping pace with market and technology changes, periodic program adjustments may be needed from time to time. Flexibility in program implementation can help ensure that the program is adequately and sufficiently deploying rebates to priority locations in furtherance of the State's clean energy and carbon reduction goals, including in multi-family dwellings; at workplaces that can support daytime charging; in parking facilities that can support the visitor industry's transition to clean transportation, such as at hotels and rental car facilities; and in areas that will help to make the purchase of an electric vehicle a choice for Hawaii's low and moderate-income working families. Expanding rebate eligibility to a wider variety of electric vehicle charging systems can increase program participation and accelerate charging system deployment.

This bill provides a rebate “for new or upgraded Level 2 charging stations with one port;” eliminates the rebate cap (subject to availability of funds) and adds flexibility to the rebate program.

There is good reason to investigate eligibility for this program; because the legislature seems intent on mandating that associations provide for electric vehicle charging. An ill-conceived mandate was passed by numerous committees this past session, and only failed in conference committee.

There is history on this subject. The legislature appointed a Working Group to study it in 2015. The resulting Final Report identified a number of factors that restrain installation of electric vehicle charging stations at “multi-unit

dwellings.” See, (https://energy.hawaii.gov/wp-content/uploads/2013/07/Act-164_EV-Working-Group-Report_FINAL.pdf)

Oddly, that report has not deterred subsequent efforts to mandate installation of electric vehicle charging stations in circumstances that the legislature’s own Working Group identified as being inappropriate. The Hawaii State Energy Office website summarizes the 2015 effort thusly:

An estimated 38 percent of Hawaii’s housing units are in Multi-unit dwellings (MUDs), which include condominiums, cooperative housing and community associations. MUDs pose challenges to EV charging because of permitting requirements, assigned parking spaces, cost allocation for installing and operating charging facilities, and the need for coordination with building managers and homeowners associations. In 2015 the Hawaii State Legislature passed Act 164, establishing a working group to “examine the issues regarding requests to the board of directors of an association of apartment owners, condominium association, cooperative housing corporation, or planned community association for the installation of electric vehicle charging system.” The working group explored barriers and opportunities and produce a report of their findings and recommendations for legislation that could best promote EV adoption in Hawaii by improving charging infrastructure in MUDs.

<https://energy.hawaii.gov/act-164-ev-charging-station-installation-multi-unit-dwelling-working-group>

Some advocates have testified as to subsequent proposals along the lines of “EV good, associations bad.” That is not surprising.

The surprise is that the guidance provided by the Act 164 Final Report has not been well-incorporated into legislation. Technical, financial and practical issues are simply overlooked in favor of being “green.” Industry supports the 100% renewable energy goal and is ready, willing and able to collaborate on policy that can be supported, taking identified issues into account.

The close call reflected in 2022's SB 2196 SD2 HD2 illustrates how nuance has sometimes been absent on energy issues. That bill passed the following committees:

Senate

- Energy, Economic Development and Tourism;
- Transportation;
- Commerce and Consumer Protection;
- Ways and Means; and

House

- Energy & Environmental Protection;
- Consumer Protection & Commerce; and
- Finance.

Section 1 of the bill would have prohibited the issuance of a building permit “for any new multi-family residential building that will have ten or more parking stalls, unless the building’s parking stalls will be electric vehicle charger ready.” LAC generally supports the incorporation of electric vehicle charging capacity into projects that have yet to be built.

The question is whether every parking stall should be charger ready.

Certain building industry-related testifiers objected to the new construction mandate, including on the basis that such a mandate would increase the cost of housing. A less onerous requirement, such as including on-site charging opportunities for a specified percentage of vehicles, might reasonably be considered.

Sections 2 through 4 would have imposed a mandate on cooperative housing corporations, planned community associations and condominiums, using essentially the same language in each of those sections. Section 4, relating to condominiums, is reprinted below for illustration:



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SECTION 4. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§514B- Residential properties; electric vehicle charging systems; requirement. Each association shall have plans to incorporate electric vehicle charging systems, onto any of its residential properties that are newly constructed after January 1, 2023; provided that the association has sufficient and adequate common area infrastructure and boundaries. The plans shall include electric vehicle charger ready stalls for parking stalls constructed, including details on sufficient wiring, electrical conduit, electrical panel service capacity, overcurrent protection devices, suitable termination points to connect to a charging system, and one hundred twenty volt to two hundred forty volt outlets."

The problems with this language are basically four-fold. First, no committee addressed what “newly constructed” meant. Second, in light of Section 1, the bill was vulnerable to the interpretation that all “parking stalls constructed” would have to be EV charger ready, and it is unclear that the referenced parking stalls would only be those that are “newly constructed.” Third, the words “as reasonably determined by the board of directors” would be needed in relation to the “sufficient and adequate common area infrastructure criteria. Fourth, a mandate date of January 1, 2023 would frustrate projects in development.

It is difficult to discern what constitutes “residential properties that are newly constructed” in the context of an existing project. That language might apply to those few projects being developed in phases; but such limited application is not what is

apparently intended.

So, would a maintenance and repair project mean that “residential properties are newly constructed”? There is no objective basis for making that determination, because the various committees declined to specify a clear trigger for the mandate. Consequently, the bill would have both inhibited needed maintenance and repair and enabled potentially expensive litigation over the meaning of the bill. The legislature can do better.

Once triggered, would the mandate mean that all parking stalls at a project would have to be made EV charger ready? A proposed amendment to clarify that the focus was on parking stalls that are “newly constructed” was not adopted. This suggests that something broader might have been intended.

The legislature also left unaddressed how the determination that “the association has sufficient and adequate common area infrastructure and boundaries” would be made. The obvious authority would be the board of directors but, again, the legislature declined an offered amendment to clarify that issue.

Absent that clarification, however, any owner could opine, on the basis of no evidence, that the association has what it is needed for the desired installation. This would be another opportunity for litigation.

It is not too much to ask that the legislature provide clarity when it mandates action. It would be inappropriate to ignore significant identified issues.

Separate and apart from those issues, though, it is unclear why the legislature would consider an EV charger mandate when it is also promoting hydrogen fueling systems.



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SB 2570 SD2 HD1 CD1 establishes a “zero emission vehicle fueling system rebate program that incentivizes the installation or upgrade of a zero-emission fueling system,” which is defined as “a hydrogen fueling system that stores and dispenses only renewable hydrogen.”

Moreover, **SB 3311 SD2 HD2** provides for “an electric vehicle sales growth working group” that not only omits LAC but does not include anyone relevant to the housing industry, even though mandates affecting housing are clearly within the contemplation of the legislature.

SECTION 1. The purpose of this Act is to:

- (1) Establish long-term goals for zero emissions transportation in Hawaii and abroad to reduce and eliminate transportation emissions;
- (2) Establish an interisland transportation working group comprising government agencies and expert stakeholders to develop plans and recommendations for achieving zero emissions interisland transportation; and
- (3) Establish an electric vehicle sales growth working group to develop plans to ensure sufficient support for the growing use of electric vehicles in the State

SB 2730 SD1 **[DID NOT PASS HOUSE]**

This bill would have effectively ended covenant enforcement, by freeing violators from the risk of being held accountable, and by shifting the loss resulting from misconduct onto innocent owners. The bill reflects a stunning lack of appreciation for how associations work, and is a part of a persistent effort to thwart association self-governance.

Covenant enforcement is premised upon the notion that the person who violates the covenant is responsible for the fees and costs associated with the association’s efforts to obtain compliance. If this bill had passed, then at least 75% of the enforcement cost would be paid by owners who did not violate the covenants.

SECTION 1. The legislature finds that when boards of directors of condominium associations seek legal assistance to protect the collective interests of their associations, it is the board, not the individual unit owners, who are the clients of the attorneys. Accordingly, compensation for the legal services and costs should be paid in full entirely with the associations' funds and reserves, as the exclusive sources of payment.

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The legislature further finds that these fees should be limited in proportion to the costs of the matter being resolved. The costs of an association are shared by all its unit owners. As such, excessive fees have a negative impact on all unit owners in an association.

The purpose of this Act is to:

- (1) Require that the fees for attorneys retained by an association be paid from an association's funds or reserves;
- (2) Require approval of the majority of unit owners before an association may seek reimbursement of legal fees in excess of twenty-five per cent of the original debt amount; provided that, for the collection of debt totaling less than \$2,000, the legal fees sought to be recovered from a unit owner shall not exceed twenty-five per cent of the claimed debt;
- (3) Require attorneys retained by a condominium association to confine their communications to the condominium board, except when the attorneys must request and require materials and responses directly from owners for each matter; and
- (4) Prohibit attorneys retained by a condominium association from billing unit owners directly.

SB 2752 SD2 HD2 CD1

The purpose of this bill “is to require an owner of an abandoned well to repair or seal the well at the owner’s expense.” This is because “wells in a state of disuse or disrepair can become conduits for contaminants to be introduced into ground water.”

SB 2923 HD1 CD1

SECTION 1. The legislature finds that the use of aerial fireworks during celebrations continues to cause significant disruption and concern and that a stronger deterrent is needed to curtail the use of illegal fireworks.

According to the Report of the Illegal Fireworks Task Force to the legislature for the regular session of 2011, increasing fines associated with illegal fireworks may act as a stronger deterrent.

The purpose of this Act is to increase the generally applicable statutory fine and the fine for homeowner liability under the Fireworks Control Law from \$2,000 to \$5,000.

SB 2990 SD1 HD1 CD1

SECTION 1. The legislature finds that the use of cover crops, green manure, and compost increases agricultural productivity and aligns

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with the State's integrated sustainability goals. Plants used for this purpose, including grasses, legumes, and forbs, add nutrients to the soil, act as windbreaks, assist with water retention, provide habitats for beneficial insects, and help prevent soil erosion.

The legislature further finds that it is in the interest of the State to incentivize the use of management practices that enhance the quality and sustainability of Hawaii's agricultural lands.

Accordingly, the purpose of this Act is to establish and appropriate moneys for a cover crop reimbursement pilot program to reimburse farming operations in the State for the costs of acquiring cover crop seeds, green manure, or compost.



SB 3158 SD2 HD1 CD1

This bill provides, in part, as follows:

SECTION 1. The purpose of this Act is to reduce the cost of living and cost of transportation by providing rebates for the purchase and use of electric bicycles and electric mopeds.

SECTION 2. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§196- Electric bicycle and electric moped rebate program; third-party administrator; special fund. (a) The department of transportation shall administer a rebate program that incentivizes the purchase of new electric bicycles and new electric mopeds and may contract with a third-party administrator pursuant to subsection (i) to operate and manage the rebate program.

(b) Each eligible purchase of a new electric bicycle or new electric moped shall receive a rebate of either twenty per cent of the retail cost or \$500, whichever amount is lower; provided that no individual shall receive more than \$500 in total rebates each fiscal year.

SB 3201 SD1 HD1 CD1

The purpose of this Act is to align the state general excise tax law with the federal income tax law by exempting from the State's general excise tax, the fundraising income generated by a tax-exempt nonprofit organization, while retaining the general excise tax for gross income derived from any "unrelated trade or business", as defined by the Internal Revenue Code. This Act expands the

general excise tax exemptions available to charitable, religious, and educational organizations and is not intended to limit or restrict any currently available tax exemptions. Furthermore, this Act does not affect rental income generated by an unrelated trade or business, which will continue to be subject to the general excise tax.

SB 3272 SD2 HD2 CD1

SECTION 1. The legislature finds that residents in the State must endure the excessive noise that helicopter tours and small aircraft generate. Federal legislation, such as the National Parks Air Tour Management Act of 2000, established rules that tour operators must follow when flying over national parks like Hawaii Volcanoes National Park, Pearl Harbor National Memorial, and Haleakala National Park. Therefore, it is in the interest of the State to monitor and ensure that federal

regulations are being followed and that the State has the option not to renew a tour aircraft operation permit for any company that repeatedly deviates from flight plans over sensitive areas.

The legislature further finds that the Federal Aviation Administration, department of transportation, some Hawaii tour helicopter companies, and other interested stakeholders have formed an unofficial Hawaii air noise and safety task force with the stated intent of addressing increasing safety and community disruption concerns, but have been criticized for not fully engaging and responding to public concerns in determining regulatory or voluntary changes in operations. An increasing number of elected officials and community organizations have expressed increasing concern with safety risks and community disruption arising from tour helicopter and small aircraft operations.



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The purpose of this Act is to:

- (1) Require tour aircraft operators to file appropriate reports and disclosures so that the State can monitor compliance with federal regulations; and
- (2) Formally establish the air noise and safety task force.

SB 3324 SD2 HD2 CD1

The problem of certain old subdivisions, at least some of which are on Hawaii Island, that lack significant structure will become the subject of a working group.

SECTION 1. The legislature finds that some housing subdivisions in the State have been approved without a requirement that the lot owners fund the repair and maintenance of the private roads and other infrastructure within the subdivision. Unlike condominium property regimes, many housing subdivisions are not subject to a statutory framework or an oversight agency to oversee the creation, monitoring, training, and auditing of the various volunteer associations responsible for the subdivision infrastructure. Accordingly, the judicial system has created a patchwork system through judgments in various lawsuits that does not provide adequate oversight. ***

Accordingly, the purpose of this Act is to establish a working group to examine and address the problem of infrastructure repair and maintenance in planned housing subdivisions that do not have compulsory homeowner associations.

COUNTY

Counties are becoming more active in regulating associations. For example:

- The Honolulu City Council has passed significant short-term rental restrictions. Bill 41, now Ordinance 22-7, was predicated on findings quoted, in part, below:

SECTION 1. Findings and Purpose. Short-term rentals are disruptive to the character and fabric of our residential neighborhoods; they are inconsistent with the land uses that are intended for our residential zoned areas and increase the price of housing for Oahu's resident population by removing housing stock from the for-sale and long-term rental markets. The City Council finds that any economic benefits of opening up our residential areas to tourism are far outweighed by the negative impacts to our neighborhoods and local residents.

Interested persons should obtain legal advice. In general, among other things:

- "A hosting platform shall exercise reasonable care to confirm that a bed and breakfast home or transient vacation unit located within the city is lawfully registered, permitted, or otherwise allowed as a bed and breakfast home or transient vacation unit prior to providing, and collecting or receiving a fee for, booking services."
- The "owner, operator, or proprietor of a transient vacation unit who [holds] held a valid nonconforming use certificate [NUC] issued pursuant to this section on August 1, 2019" may possibly remain in operation. Renewal requirements and restrictions apply. For example, guests may not park on nearby public streets.

- “Sec. 21 -5.730 Bed and breakfast homes and transient vacation units.

(a) Bed and breakfast homes and transient vacation units are permitted in the following areas:

(1) The areas located within the Apartment Precinct of the Waikiki Special District mauka of Kuhio Avenue, as designated in Figure 21-5.1;

(2) The areas located within the A-1 low-density apartment zoning district and the A-2 medium-density apartment zoning district situated in close proximity to the Ko Olina Resort, as designated in Figure 21-5.2: and

(3) The area located within the A-1 low-density apartment zoning district situated in close proximity to the Turtle Bay Resort, as designated in Figure 21-5.3.

- Registrants must comply, without limitation, with the following registration requirements (provided that those with valid NUCs need only meet #3):

Category #1 (Initial Registration):

Current title report showing all owners;

GE/TAT licenses;

For B&B, evidence of RPT home exemption and 50% ownership interest;

\$1,000 registration fee;

Evidence of insurance;

Evidence that use is permitted by AOUE/HOA:

Informational binder;

Evidence that unit: 1) is not “affordable” subject to income restrictions, 2) did not receive rental assistance; and 3) had no evictions w/in 12 months.

Category #2 (Annual Renewal):

For B&B, evidence of RPT home exemption;

Tax clearances;

Updated title report if any ownership change;

\$500 registration fee;

Evidence of insurance;

Confirmation that use is permitted by AOUE/HOA:

NOTE: “The director may deny renewal of a registration if: (i) the owner or operator receives one or more notices of order for violation of this subsection within a one year period; (ii) the owner or operator demonstrates an inability to operate a bed and breakfast home or transient vacation unit without causing significant negative impacts to the surrounding community, including but not limited to instances where complaints from the public indicate that noise or other nuisances created by guests disturbs residents of the neighborhood in which the bed and breakfast home or transient vacation unit is located; or (iii) where other good cause exists for denial of the renewal application.

Category #3 (Restrictions and Standards):

Smoke/CO2 detectors in each rented bedroom/adjacent hallway;

All overnight guests must be registered;

Bedrooms required for sleep (except studio), w/2 adults max. per bedroom;

Keep two-year, detailed, guest registry;

Signage showing STR use is prohibited;
\$1,000,000 CGL coverage (can be provided by hosting platform);
Gatherings of 10 or more unregistered people prohibited;
Informational binder with prescribed information in unit.

- Units subject to inspection, fine and permit revocation;
- Registration not transferable;
- Significant advertising requirements/restrictions.
- “The provisions of this section do not terminate or supersede private restrictive covenants or other restrictions that prohibit the use of real property as a bed and breakfast home or transient vacation unit.”
- “Transient accommodation” means living accommodations that are offered or made available to transient occupants for less than 90 consecutive days.”
- “Transient occupant” means any person who rents a lodging or dwelling unit, or portion thereof, for less than 90 consecutive days, and whose permanent address for legal purposes is not the lodging or dwelling unit being rented.”
- Separately, the Honolulu City Council is considering Bill 22, to require “benchmarking” of utility usage. A burdensome make-work project.
- The Kauai County Council passed a bill that prohibits new restrictions relating to regulation of long-term rentals, additional dwelling units, additional rental units, and guest houses.

FINALLY

These materials are being produced prior to the June 27, 2022 deadline for the Governor to indicate what bills he intends to veto, and prior to the final approval or veto deadline of July 12, 2022. It is therefore possible that one or more of the bills passed might still not become law. Also, bills have differing effective dates. As always, check with association counsel before taking action in relation to the subjects mentioned here. The general information provided here is not legal advice.