

~~wakei2, Daniel~~

From: ~~Richard Port [mailto:port881@hawaii.net]~~
Sent: Monday, March 15, 2010 2:49 PM
To: CPCtestimony
Subject: Testimony SB 2222, SD1, HD1

Representative Robert N. Herkes, Chair,
Committee on Consumer Protection & Commerce

Representative Jon Riki Karamatsu, Chair,
Committee on Judiciary

Hearing: Tuesday March 16, 2010 at 2:00 p.m.

Testimony: SB 2222, SD1, HD1 Relating to Planned Community Associations

Dear Representatives,

This is to provide strong support for SB 2222, SD1, HD1 which enables members of Planned Community Associations some of the same protections currently provided to condominium owners. It is long past time for home owners to have at least some of the same rights as owners who reside in condominiums.

The only opportunities of residents of Planned Community Associations to "have a say" in the operation of their associations is during the annual meetings. Proxies are "All Powerful" at these meetings.

There is a need for PCA Boards to respect and respond to the concerns of their home owners to the extent possible. This bill will ensure a willingness to pay attention to home owners who can vote for or against their Boards using their proxies.

Thank you for this opportunity to testify in support of SB 2222, SD1, HD 1.

Richard Port



P.O. Box 976
Honolulu, Hawaii 96808
March 15, 2010

Honorable Robert N. Herkes
Honorable Glenn Wakai
Committee on Consumer Protection and Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

and

Honorable Jon Riki Karamatsu
Honorable Ken Ito
Committee on Judiciary
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 2222 SD1 HD1

Dear Chairs Herkes and Karamatsu, Vice-Chairs Wakai and Ito and Committee Members:

I chair the CAI Legislative Action Committee ("LAC"). The LAC takes no position on the broad question presented by the bill, but notes a particular concern about proposed language in 421J-4(d)(3)(C). The proposed language reads:

(d) A proxy, to be valid, shall: *****(3) If it is a standard proxy form authorized by the association, contain boxes wherein the owner has indicated whether the proxy is given: *****

(C) **To those directors present at the meeting so that the vote shall be shared to give each candidate an equal percentage.**

(Bold and italics added) That language is unclear. It is also unhelpful.

The language might be interpreted to mean that all directors who are also candidates will share the proxy. If so, that would tend to render the proxy useless in elections for directors. It would also deprive other directors from the opportunity to vote the proxy for issues *other than* the election of directors. Proxies have many uses besides electing directors.

Honorable Robert N. Herkes
Honorable Jon Riki Karamatsu
March 15, 2010
Page 2 of 2

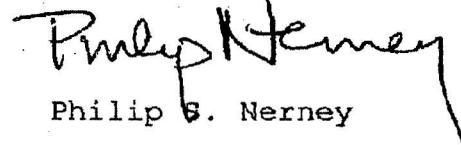
CAI does not perceive the value in a proxy selection that is useless for the election of directors and unfair to other directors in all cases. CAI encourages the Committees to review that language.

Moreover, it is also possible to imagine an argument to the effect that the proposed language means that all candidates for the Board could share a proxy intended for the Board, whether or not the candidate is on the Board. It is one thing for each *director* to receive a fraction of a proxy intended for the Board. It is quite another to confer a proxy on unelected *candidates*.

With nominations from the floor, it would behoove everyone who wants to vote a piece of the Board proxies to nominate themselves. Also, a proxy giver would not know to whom the proxy is being given if it the statute was interpreted to mean that *candidates* could vote Board proxies.

In short, the proposed language serves no valid purpose and it is ambiguous. Thus, while LAC takes no position on the question of whether proxy language should be the same for both planned community associations and condominiums, it notes the shortcomings of the above-referenced language.

Very truly yours,

A handwritten signature in black ink that reads "Philip S. Nerney". The signature is written in a cursive style with a long, sweeping underline.

Philip S. Nerney



**HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS
LEGISLATIVE COMMITTEE
P. O. Box 29213
HONOLULU, HAWAII 96820-1613
E-MAIL: HSAP.LC@GMAIL.COM**

To: Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice-Chair
House Committee on Consumer Protection
& Commerce
State Capitol, Room 316

Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice-Chair
House Committee on Judiciary

From: Steve Glanstein, Professional Registered Parliamentarian
Chair, Legislative Committee
Hawaii State Association of Parliamentarians

Date: March 15, 2010

RE: Testimony on SB2222 SD1 HD1: Relating to Planned Community Associations
Recommended Amendments (Sent via web)

TO BE HEARD by CPC/JUD on Tuesday, March 16, 2010 at 2:00 p.m.
Conference Room 326

Dear Chairs Herkes and Karamatsu, Vice-Chairs Wakai and Ito, and Members of the Committees:

The Hawaii State Association of Parliamentarians (HSAP) has been providing professional parliamentary expertise to Hawaii for more than 40 years. I am a Professional Registered Parliamentarian and chair of the HSAP Legislative Committee. My experience includes working with condominium and community associations since 1983 (over 1,200 association meetings in 27 years).

I was also a member of the Blue Ribbon Recodification Advisory Committee formed by the Real Estate Commission of the Department of Commerce and Consumer Affairs. This committee presented the recodification of the Condominium Property Act (Hawaii Revised Statutes Chapter 514B) to the legislature which resulted in Act 164, Session Laws of Hawaii 2004.¹

¹ Refer to the website http://hawaii.gov/dcca/real/condo_ed/condo_bull2/cb_01_05/cb0204.pdf for more information.

This testimony is provided as part of HSAP's effort to assist the legislature and community on the basis of our collective experiences with the governance documents and meetings of numerous condominiums, cooperatives, and Planned Community Associations (PCAs).

I strongly recommend that the committees amend SB2222 SD1 HD1 so that HD2 restores the language of SB2222 SD1.

A brief summary of companion bills SB2222 and HB2624, both Relating to Planned Community Associations, is useful to explain the purpose of this recommendation.

SB2222 and HB2624 were designed to provide consistency with the condominium statute (HRS §514B-123) regarding solicitation of proxies, deadlines, and owner statements.

HB2624 was amended by the House Committee on Housing to: (1) eliminate developer voting of unsold units; (2) remove an owner's right to provide a proxy to the board; and (3) remove an owner's right to evenly split the proxy among the board members present at the association meeting.

This created a substantial disconnect between the original HB2624 and HB2624 HD1. HB2624 HD1 was subsequently heard and deferred by the House Committee on Consumer Protection & Commerce.

SB2222 and HB2624 were introduced to address in HRS Chapter 421J: (1) the current situation with PCA proxies that limits individual owner proxy solicitations to 100 words; and (2) the increased probability of a deadlocked election with the "majority of the board" requirement instead of the "majority of the directors present at the meeting" standard, to be consistent with HRS §514B-123.

A. SB2222 – As Originally Submitted

SB2222 originally contained two sections that proposed to clarify HRS Chapter 421J.

Section 1 updates the proxy requirements for PCAs to provide consistency with HRS Chapter 421J and the requirements for condominium associations (HRS §514B-123). The major effect of this proposal would facilitate owner solicitation of proxies by expanding the communication limit from 100 words to one page.

Section 2 makes a technical correction to the title "Robert's Rules of Order Newly Revised" by removing the comma between Order and Newly.

B. SB2222 SD1

Concerns had been expressed by a PCA² about the cost of enhancing owner communication with their membership by expanding the limit from 100 words to one page.

I responded to this concern by recommending to the Senate Committee on Commerce and Consumer Protection (CPN) to permit publication of owner communications via the internet.

I also recommended a January 1, 2011 effective date to provide time for PCAs and property management companies to modify the proxy forms for next year's annual meetings.

CPN concurred. SB2222 SD1 passed out of committee and crossed over to the House.

C. SB2222 SD1 HD1

The House Committee on Housing held a hearing on SB2222 SD1 on March 10, 2010.

A review of the testimony to the House Committee on Housing posted on the legislature's website revealed some interesting characteristics:³

1. Testimony in opposition

The only written testimony in opposition was from two PCAs which opposed SB2222 SD1 due to their cost projections and a restriction regarding the resident manager.⁴

Both testimonies omitted or ignored the provision in SB2222 SD1 that permits compliance through publication on the internet, which has a minimal cost.

SB2222 SD1 at page 8, lines 1-5 states, "(3) An association may comply with this subsection by making information available to unit owners, at the option of the owner and at no cost to the unit owner for reviewing or downloading the information, through an Internet site."

² Princeville Community Association submitted written testimony in opposition to SB2222.

³ Testimony available on legislature's website:
http://www.capitol.hawaii.gov/session2010/Testimony/SB2222_SD1_TESTIMONY_HSG_03-10-10_2_.pdf
and http://www.capitol.hawaii.gov/session2010/Testimony/SB2222_SD1_TESTIMONY_HSG_03-10-10_2_LATE_.pdf

⁴ Princeville Community Association and Mililani Town Association submitted testimony in opposition to SB2222 SD1.

Both of these PCAs have internet websites which could conceivably be used to communicate a homeowner's statement to their fellow owners.⁵

One of the PCA letters written by its general manager referred to differences between condominium associations and PCAs. The general manager was opposed to making the proxy statutes in Chapters 421J and 514B similar by implementing the prohibition against a resident manager soliciting or using proxies.

This prohibition was instituted in condominium associations in order to: (1) **remove the resident manager from the political election process** of the manager's supervising board of directors; and (2) minimize any retribution that may result from an owner's refusal to provide a proxy to the resident manager.

I believe it is unethical to involve the general or resident manager in the process and politics of proxy solicitations, especially when the solicitation is directly related to the election of the board of directors.

This restriction on condominium associations in Chapter 514B is long overdue for PCAs in Chapter 421J.

2. Testimony in support

Mr. Richard Port provided written testimony in favor of the SB2222 SD1. It is usually a good sign when Mr. Port and I agree on language in a particular bill.

3. Testimony requesting amendments

Two written testimonies were provided to the House Committee on Housing by Mr. Roy Ababa and Ms. Marina Rachael. Both documents were unsigned.

Mr. Roy Ababa's letter

Mr. Ababa lives in West Loch Estates. His testimony states that there are a lot of people who want to be board members.

⁵ Princeville Community Association has a website: <http://www.pcaonline.org/> and Mililani Town Association has a website: <http://www.mililanitown.org:82/>.

The West Loch Estates meeting minutes show the following:

- At the annual meeting of 2/15/2006, 4 people ran for 3 director positions.
- At the annual meeting of 2/21/2007, 3 people ran for 3 director positions.
- At the annual meeting of 2/21/2008, 4 people ran for 3 director positions.
- At the annual meeting of 3/26/2009, 5 people ran for 3 director positions.
- At the annual meeting of 2/03/2010, 5 people ran for 3 director positions.

The West Loch Estates annual meeting minutes show that there is no large number of candidates running for the board.

Mr. Ababa is not indicated as a candidate for the board during the past 5 years.

At the 2010 annual meeting, an owner who had several complaints about the financials was immediately nominated and elected to the board!

If CPC/JUD wishes to hear from an association representative, I'm sure that could be promptly arranged.

Ms. Marina Rachael

Ms. Rachael stated in her testimony,

"The current situation discourages me, as well as others who wish to participate as directors on the board. In my planned community, the same board members have been there for years. I kept wondering why it seems like no one else would be willing to run for that office. After discussing it with my legislator, I found out the intricacies of the 'proxy process.' **This process gives discretion to the current directors as to how to use the proxy votes**, which includes giving the votes to themselves so that they can do whatever they want and close out other candidates who want to join the board. This is grossly unfair to people like me who may want to run for that directorship."

(Emphasis added.)

There are many reasons why board members remain on the board. It is **not the proxy process** that keeps a member on the board. It is the **owners' support of either an incumbent or prospective board member using the proxy process.**

Owners don't have to give their proxies to the board. It is an owner's right, not an obligation.

In contrast to Ms. Rachael's PCA, some PCAs such as the Waikoloa Villages Association, the bylaws mandate the election process to be done by mail, separate from proxies at the meeting. The ballots are counted by the League of Women Voters or an independent group, separate from the board or management. Proxies are permitted only for business matters that arise at the PCA meeting.

In PCAs such as the Palehua Community Association, owners have successfully changed the board composition through solicitation and use of the proxies.

D. Summary of Changes in SB2222 SD1 HD1

The House Committee on Housing made three major changes to SB2222 SD1 as summarized in HSCR729-10⁶:

1. Deleted the provision allowing an authorized standard proxy form to include an option whereby the owner may grant a proxy to an association board as a whole so that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting.
2. Changed the option on an authorized standard proxy form whereby the owner may grant proxy to those directors present at the meeting so that the vote is shared equally among the directors, to state that the vote will be shared equally among the candidates.
3. Stated that a parliamentarian shall not be required to be present at association and board of directors meetings.

Each of these changes in HD1, including their impact and unintended consequences, is discussed below.

E. Removal of proxy option to board of directors as an entity

In the 1970s and early 1980s, there were no options for providing proxies to the "board as a whole." Homeowners simply gave their proxies to one person, the board president. In some cases, this made the president the person with the most votes, controlling the election and meeting, regardless of the board's preferences.

The addition of an option to designate the board as an entity or board members individually provided a balance that has worked to this day.

⁶ http://www.capitol.hawaii.gov/session2010/CommReports/SB2222_HD1_HSCR729-10_.htm

Therefore, this change to SB2222 SD1 is antagonistic to the community and will reverse the work done by many community stakeholders to bring fairness to the process.

F. Alteration of proxy option based upon directors present at the meeting

SB2222 SD1 HD1 at page 5, lines 11-19 states,

“(3) If it is a standard proxy form authorized by the association, contain boxes wherein the owner has indicated whether the proxy is given: [...]

(C) To those directors present at the meeting so that the vote shall be shared to give each candidate an equal percentage.”

This change (1) fails to consider that these proxies may need to be used for adopting mandatory tax resolutions, approving minutes and the auditor’s report, etc.; and (2) ignores the fact that one or more individuals at a meeting may destroy the owner’s choice to provide a proxy to be fairly split among the board members.

An association member can easily dilute and potentially destroy an owner’s decision to provide a proxy to be split equally among directors present at a meeting.

The association member could simply nominate a number of shadow candidates to force the proxy-holder’s vote to be divided among these shadow candidates, notwithstanding the owners’ wishes in the matter.

There are two ultimate results:

- (1) deadlocked elections which usually retain the same board members; or
- (2) a movement towards simply once again naming the board president as the proxy-holder, thereby perpetuating boards through one person.

G. Parliamentarian not required to be present at association or board of directors meetings

SB2222 SD1 HD1 at page 9, lines 2-3 states, “A parliamentarian shall not be required to be present.”

This change is irrelevant because parliamentarians are currently not required to be present at association and board of directors meetings.

There is NO REQUIREMENT in *Robert’s Rules of Order Newly Revised* for parliamentarians to be at meetings.

Parliamentarians are usually hired to go to meetings to ensure that they are conducted properly with full accord to the rights of the association and its members.

H. Summary

A good faith effort to construct positive legislation to improve consumer communication for the election process for Planned Community Associations has been derailed by HD1.

The testimony that combated costs against enhanced communications from owners who were soliciting proxies (100 word statement increased to one page) was addressed through the addition of publication on the internet.

SB2222 SD1's provision that a resident manager would no longer be able to solicit proxies in a PCA is an ethical and just outcome. Association management must remain free of the politics of proxy solicitations.

I strongly recommend that the CPC/JUD amend SB2222 SD1 HD1 so that HD2 restores the language of SB2222 SD1.

This would ensure that the original intent of the bill is retained; i.e., the proxy wording in HRS §421J-6 will match the current proxy wording in the condominium statute HRS §514B-123.

If we may be of any further assistance to the committees, please feel free to contact me via phone: 423-6766 or by e-mail: hsap.lc@gmail.com.

Thank you for the opportunity to present this testimony.

Sincerely,

Steve Glanstein

Digitally signed by Steve Glanstein
DN: cn=Steve Glanstein
Date: 2010.03.15 10:50:24 -10'00'

Steve Glanstein, Professional Registered Parliamentarian
Chair, Legislative Committee
Hawaii State Association of Parliamentarians

cc: Sen. Rosalyn Baker, Chair, Senate Committee on Commerce and Consumer Protection

March 15, 2010

Robert N. Herkes, Chair
Committee on Consumer Protection & Commerce

Jon Karamatsu, Chair
Committee on Judiciary

Hawaii State Capitol, Room 316
415 South Beretania Street
Honolulu, HI 96813

RE: Comments on SB2222 SD1 HD1 (originally proposed to make proxy laws the same for
Condominiums and Planned Community Associations)

Dear Chairs and members of the committees,

I am writing this letter on behalf of Carter Professional Center, Bayview Estates, Keauhou Estates, Alii Lani, Kona Plaza, Alii Point and KaMilo at Mauna Lani. The current law makes it difficult for us to conduct our business is damaging our association's ability to conduct a meeting and conclude our business.

I request that you make the proxy form for Planned Community Associations and Condominium Associations consistent with each other.

The Senate's version of SB2222 SD1 would have done that.

The Housing Committee in the House recently eliminated our owner's choice to give a proxy to the board majority.

We have trouble getting quorum and this board majority requirement is an important part of conducting our meetings.

The Housing Committee in the House also added a statement that "a parliamentarian shall not be required to be present at association and board of directors meetings."

This makes no sense. We don't have a requirement for a parliamentarian in our bylaws. We made a conscious choice to use a parliamentarian. We respectfully request that the legislature refrain from dictating who the association board can hire to be at their meetings.

Please do what is necessary to make the proxy laws the same for Condominium Associations and Planned Community Associations by making the bill match the one passed by the Senate (SB2222 SD1).

Sincerely,

Connie K. Vohden
Principal Account Executive
Certified Management, Inc.



Princeville *at Hanalei* Community Association

Enhancing the Quality of Life and Princeville Experience for its Members

February 18, 2010

Honorable Chair Rep. Robert N. Herkes,
and Members of the Committee on Consumer Protection and Commerce

Re: SB 2222, SD1 HD1 – Relating to Planned Community Associations;

Tuesday, March 16, 2010; Conference Room 325, 2:00 pm

Dear Representative Herkes and Members of the Committees:

My name is Rohit J. Mehta and I am testifying on behalf of the Princeville at Hanalei Community Association (“PHCA”), a planned community association under Chapter 421J, Hawaii Revised Statutes. PHCA is opposed to the adoption of SB 2222 SD1 HD1, a flawed bill.

The bill is based on the erroneous assumption that Planned Community Associations should be regulated in the exact manner as condominiums. Planned Community Associations are not creatures of statute, but exist by virtue of diverse governing documents intended to serve the needs of associations created for widely differing purposes. Condominiums exist because they have been created and are wholly regulated under one of Hawaii's two condominium laws. Simply taking random provisions under those laws and applying them to Planned Community Associations is not only unwarranted and ill-considered but would have many unintended adverse consequences. For example, among other things, the bill proposes that resident managers that own a unit are not allowed to vote. As many planned community associations are self-managed or may have management agreements with particular homeowners, providing by law that such homeowners cannot vote in their own capacity is inappropriate.

PHCA is one of the largest planned community associations in the State of Hawaii, with over 2,300 members. It is a resort community and its members include some 770 single-family homes, a hotel, 33 condominium or timeshare properties.

Based on the above, we respectfully request that SB 2222 SD1 HD1 be held. Thank you for your consideration with this testimony.

PRINCEVILLE AT HANALEI COMMUNITY ASSOCIATION

Dr. Rohit J. Mehta, General Manager

March 13, 2010



Mililani Town Association

95-303 Kaloapau Street
Mililani Town, HI 96789
Phone (808) 623-7300

Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair
Committee on Judiciary
State Capitol
Honolulu, HI 96813

VIA EMAIL: JUDTestimony@Capitol.hawaii.gov

Re: SB 2222 SD1 HD 1 -Testimony in OPPOSITION:
Relating to Planned Community Associations
Hearing: March 16, 2010, 2:00 pm, Conf Room 325

Dear Chair Karamatsu, Vice-Chair Ito and Members of the Committee:

My name is Will Kane, Vice-President of the Mililani Town Association (MTA). As you may be aware, MTA encompasses 16,000 plus units involving both single family units and townhouse projects.

Mililani Town Association does NOT support this bill and believes it should be deferred for the following reasons:

1. This bill would cause severe financial difficulties on Planned Community Associations (PCA's) due to the requirement stating...

"The statement shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page, and indicate the owner's qualifications to serve on the board or reasons for wanting to receive proxies;..."

By expanding and adding the requirements from a 514B to a 412J for an association as large as Mililani, we have projected that additional postage, copying and other costs alone would be over \$100,000 a year.

2. Change for the sake of matching 421J to 514B, absent a valid premise that fits all associations, along with there being no benefit but rather a negative cost impact to members of large associations, does not justify legislation to make this change.

Due to the reasons stated above, MTA respectfully asks that SB 2222 SD 1 HD 1 be deferred. Thank you for your consideration in this matter. If you have any questions, please feel free to contact me at wkanemta@yahoo.com.

Sincerely yours,

William T. Kane II