

**SB 2222**



# Princeville *at Hanalei* Community Association

*Enhancing the Quality of Life and Princeville Experience for its Members*

February 18, 2010

Honorable Chair Senator Rosalyn H. Baker  
and Members of the Committee on Commerce and Consumer Protection

**Re: SB 2222 – Relating to Planned Community Associations;**

**Tuesday, February 23, 2010; Conference Room 229, 9:00 a.m.**

Dear Senator Rosalyn 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, 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. For example, a commercial development with one residential unit may be governed by the law or a large subdivision with residential dwellings to be constructed in the future. 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 associations are self-managed or may have management agreements with particular homeowners, providing by law that 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 be held. Thank you for your consideration with this testimony.

PRINCEVILLE AT HANALEI COMMUNITY ASSOCIATION

*Rohit Mehta*

Dr. Rohit J. Mehta, General Manager



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

February 17, 2010

Chair: Rosalyn H. Baker  
Vice Chair: David Y. Ige  
Senate Commerce and Consumer Protection Committee  
Hawaii State Capitol, Room 231  
415 South Beretania Street  
Honolulu, HI 96813

**RE: SB2222; Testimony in FAVOR; Hearing Date: 2/23/2010 9:00 a.m.;  
Sent via web**

Dear Chair Baker, Vice-Chair Ige, and Members of the Committee:

The Hawaii State Association of Parliamentarians ("HSAP") has been providing professional parliamentary expertise to Hawaii for more than 40 years. I am the chair of the Legislative Committee. I'm also an experienced Professional Registered Parliamentarian who has worked with condominium and community associations every year since I began my practice in 1983 (over 1,200 in 26 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2006.

This testimony is provided as part of HSAP's effort to assist the community based upon our collective experiences with the bylaws and meetings of numerous condominiums, cooperatives, and planned community associations.

SB2222 contains 2 sections that propose to clarify Chapter 421J:

1. Section 1 updates the proxy requirements for planned community associations to be similar to those requirements for condominium associations (HRS §514B-123).

This will provide consistency with the condominium statute regarding solicitation of proxies, deadlines, and owner statements.

**This consistency will provide more flexibility for owners in planned community associations, especially larger ones. It will enhance an owner's ability to communicate more information to all owners in preparation for a planned community association meeting.**

It is accomplished by expanding the allowable owner/candidate statement from the older 100 word statement to a maximum of one page.

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

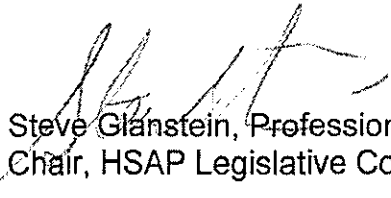
One suggestion: Please consider an amendment to SECTION 4 to provide a startup date of January 1, 2011 so that planned community associations will have advance notice to update their proxy form **before** their 2011 annual meetings.

**We request that you approve this bill with a January 1, 2011 effective date.**

Our committee looks forward to any discussions of this proposal or improvements to clarify any part of Chapter 421J.

I may be contacted via phone: 423-6766 or by e-mail: [hsap.lc@gmail.com](mailto:hsap.lc@gmail.com). Thank you for the opportunity to present this testimony.

Sincerely,



Steve Glanstein, Professional Registered Parliamentarian  
Chair, HSAP Legislative Committee

## Eric Arquero

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**From:** Sen. Roz Baker  
**Sent:** Thursday, February 11, 2010 5:23 PM  
**To:** Eric Arquero  
**Subject:** FW: Condo Proxy Issue

SB2222

Senator Rosalyn H. Baker  
Chair, Senate Committee on Commerce and Consumer Protection  
5th District -- South and West Maui

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**From:** Allan McKenzie [mailto:mckenzie2@shaw.ca]  
**Sent:** Wednesday, February 10, 2010 2:24 PM  
**To:** Sen. Roz Baker  
**Subject:** Condo Proxy Issue

Senate Commerce and Consumer Protection Committee

Chair: Rosalyn H. Baker  
5th Senatorial District  
Hawaii State Capitol, Room 231  
415 South Beretania Street  
Honolulu, HI 96813  
phone 808-586-6070; fax 808-586-6071  
From Maui, toll free 984-2400 + 66070  
e-mail [senbaker@Capitol.hawaii.gov](mailto:senbaker@Capitol.hawaii.gov)

RE: HB2042 (proposed to remove option to provide proxy to board of directors);

HB2624 (proposed to make proxy laws the same for Condominiums and Planned Community Associations; recently amended to remove option to provide proxy to board of directors);

SB2222 (proposed to make proxy laws the same for Condominiums and Planned Community Associations)

Dear Ms. Baker :

I am writing this letter on behalf of Kona Alii Condo Board. The current law is damaging our association's ability to conduct a meeting and conclude our business. The numerous changes proposed in several bills will further hurt our association.

I understand that there are numerous changes proposed to the proxy boxes for Planned Community Associations (HRS §421J-4) and Condominium Associations (HRS §514B-123).

I ask that you modify the laws to make the proxy wording read as follows:

(3) If it is a standard proxy form authorized by the association, contain boxes wherein
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the owner has indicated that the proxy is given:

- (A) To the individual whose name is printed on a line next to this box;
- (B) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or
- (C) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage.

This change would make the proxies consistent for all Planned Community Associations and Condominium Associations. It would also remove the “Quorum only” box.

It would change the law to provide boxes for (a) the board majority, (b) the board equal, and (c) individuals as indicated in the box above. This change is requested for the following reasons:

- (1) The board majority and board equal provides owners the FREEDOM TO CHOOSE whether they will entrust the board as an entity or a split among board members to represent their interest at an annual or special meeting.
- (2) The quorum only box damages our ability to get business done. It is not understood by many people. The checking of quorum only is the same as abstaining at a meeting. However, the owner is considered present for quorum purposes. For example, if 60 percent of the owners are present, most bylaws require more than 30% to adopt a motion or resolution. If more than 30% is quorum only, then NOTHING will be adopted at an association meeting because more than 30% must vote “yes” for something to be adopted.

I understand that the House Housing Committee decided to substantially amend HB2624 to remove the board majority and board equal from the proxy form in HRS 421J-4. There was no testimony regarding this change at the hearing. This change will damage our association. We will have major quorum issues and the same board may have to continue in office because we couldn't have a valid election. This will also have tax implications if we can't adopt the IRS mandated tax resolution and we are audited.

Please do what is necessary to make the proxy laws the same for Condominium Associations and Planned Community Associations and make them match the box above.

Sincerely,

Allan McKenzie  
Secretary, Kona Alii AOA  
Kailua, Kona 96740

## Eric Arquero

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**From:** Sen. Roz Baker  
**Sent:** Thursday, February 11, 2010 6:34 PM  
**To:** Eric Arquero  
**Subject:** FW: Pending Legislation re Proxy Requirements

Senator Rosalyn H. Baker  
Chair, Senate Committee on Commerce and Consumer Protection  
5th District -- South and West Maui

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**From:** Frank Adornato [mailto:triiatall@eclipse.net]  
**Sent:** Wednesday, February 10, 2010 8:19 AM  
**To:** Sen. Roz Baker  
**Subject:** Pending Legislation re Proxy Requirements

RE: HB2042 (proposed to remove option to provide proxy to board of directors);

HB2624 (proposed to make proxy laws the same for Condominiums and Planned Community Associations; recently amended to remove option to provide proxy to board of directors);

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Senate Commerce and Consumer Protection Committee

Dear Chair: Rosalyn H. Baker

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<p>(3) If it is a standard proxy form authorized by the association, contain boxes wherein the owner has indicated that the proxy is given:</p> <p>(A) To the individual whose name is printed on a line next to this box;</p> <p>(B) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or</p> <p>(C) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage.</p>
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Please do what is necessary to make the proxy laws the same for Condominium Associations and Planned Community Associations and make them match the box above.

Sincerely,

Frank Adornato  
President,  
Kaulana Association Board of Directors  
78-7110 Kaluna Street 2C  
Kailua Kona HI 96740



House Consumer Protection & Commerce Committee

Chair: Robert N. Herkes  
5th Representative District  
Hawaii State Capitol, Room 320  
415 South Beretania Street  
Honolulu, HI 96813  
phone 808-586-8400; fax 808-586-8404  
From the Big Island, toll free 974-4000 + 68400  
E-mail [repherkes@Capitol.hawaii.gov](mailto:repherkes@Capitol.hawaii.gov)

Vice-Chair: Glenn Wakai  
31st Representative District  
Hawaii State Capitol, Room 316  
415 South Beretania Street  
Honolulu, HI 96813  
phone 808-586-6220; fax 808-586-6221  
E-mail [repwakai@Capitol.hawaii.gov](mailto:repwakai@Capitol.hawaii.gov)

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Senate Commerce and Consumer Protection Committee

Chair: Rosalyn H. Baker  
5th Senatorial District  
Hawaii State Capitol, Room 231  
415 South Beretania Street  
Honolulu, HI 96813  
phone 808-586-6070; fax 808-586-6071  
From Maui, toll free 984-2400 + 66070  
e-mail [senbaker@Capitol.hawaii.gov](mailto:senbaker@Capitol.hawaii.gov)

Vice Chair: David Y. Ige  
16th Senatorial District  
Hawaii State Capitol, Room 215  
415 South Beretania Street  
Honolulu, HI 96813  
phone 808-586-6230; fax 808-586-6231  
E-mail [sendige@Capitol.hawaii.gov](mailto:sendige@Capitol.hawaii.gov)

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SB2222 (proposed to make proxy laws the same for Condominiums and Planned Community Associations)

Dear Mr. Herkes and Ms. Baker

I am writing this letter on behalf of The Kolea Condominium Villas Association on the Big Island of Hawaii. The current law is damaging our association's ability to conduct a meeting and conclude our business. The numerous changes proposed in several bills will further hurt our association.

I understand that there are numerous changes proposed to the proxy boxes for Planned Community Associations (HRS §421J-4) and Condominium Associations (HRS §514B-123).

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association meeting because more than 30% must vote “yes” for something to be adopted.

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Sincerely,

Johnny McElree  
Secretary  
Kolea Condominium Villas Association