

SB 617

Measure Title: RELATING TO CONDOMINIUM ASSOCIATIONS.

Report Title: Condominium Associations; Proxy Voting

Description: Reduces checkbox options for a condominium association's standard proxy form by deleting the option's relating to giving proxies to the board as a whole and the directors present at the meeting.

Companion:

Package: None

Current Referral: CPN

Pasted from <http://www.capitol.hawaii.gov/session2011/lists/measure_indiv.aspx?billtype=SB&billnumber=617>



February 22, 2011

**TESTIMONY SB 617
OPPOSITION**

Association meetings are more comparable to stockholder meetings of a corporation where proxies are routinely used for voting. The similarities are as follows:

- ✓ Owners typically are voting their percentage of ownership similar to shares of stock owned.
- ✓ Owners live across the world, often cannot attend meetings, and are provided a proxy to let their voice be heard.
- ✓ Owners voluntarily appoint the Board of Directors as proxy holder as provided in corporate proxies probable because they are satisfied with the management of the community. Some owners particularly those not living in Hawaii may not know the individual names but be very happy with the Board majority's decision as a whole.
- ✓ Owners can voluntarily select "quorum only" or appoint a "person" if they do not want to appoint the Board as proxy holder.

Owners have a free choice on who to appoint as proxy holder. Eliminating the choices will have the exact opposite affect as the bill is intended. Owners who may not know the names of individual directors may simply not vote or participate in meetings.

Proxies are a long standing right for people to be heard in a business environment by exercising their right to vote through an appointed proxy holder.. Associations are businesses with the obligation to protect the association and care for its finances. The proxy as written today allows every owner their free choice to appoint their representative including attending the meeting and voting themselves.

National statistics support the view that the vast majority of owners are satisfied with the way their association is managed.

I oppose SB 617.

Warmest aloha,

A handwritten signature in black ink, appearing to read "Richard Emery".

Richard Emery
CAI LAC Committee





Mililani Town Association

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

February 20, 2011

Senator Rosalyn Baker, Chair
Senator Brian Taniguchi Vice-Chair
Committee on Commerce and Consumer Protection VIA E-Mail: CPNTestimony@capitol.hawaii.gov
State Capitol
Honolulu, HI 96813

Re: S.B. No. 617/OPPOSE – Relating to Condominium Associations
Hearing: Monday, February 28, 2011, 10:00am Conf Room 229

Dear Chair Baker, Vice-Chair Taniguchi and Committee Members:

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities on the board for 25 of the last 32 years. MTA encompasses approximately 16,000 units involving both single family residences and numerous townhouse project sub-associations.

We oppose this measure for the following reasons:

This bill proposes to eliminate two critical choices for homeowners to exercise their prerogative as to whom their proxy would be given. Removal of these two choices can be, and in the past has been useful in attempting to concentrate power by being given to only an individual.

It should be noted that the two choices being proposed to be eliminated were added and has been effective in providing the necessary alternatives for homeowners to exercise their choice for giving their proxy. The four choices currently available are important in situations where the homeowner may not be familiar with the issues or the candidates, so having the proxy being able to be given to the board as a whole for a vote as to their majority preference or to the directors at the meeting with the vote equally split amongst them. Passing this bill would eventually result in unintended consequences and is a step backwards.

Based on the above, we request this bill be deferred.

Sincerely yours,

Eric M. Matsumoto
Vice-President, Board of Directors

Cc: Sen Kidani, Rep Lee, Rep Yamane

TESTIMONY

Committee on Commerce and Consumer Protection
February 28, 2011
Conference Room 229
10:00a.m.

Chair Baker and members of the committee:

I provide testimony in favor of SB 617.

As an owner of condominium property in Honolulu, I have observed how the current ballot options, with the first box going to the board as a whole, essentially keeping power in place, deprives owners of the voice to make changes. This is especially so because so many condo owners live off-site and, with the board in control of communications through the property manager, a new voice is rarely able to be heard. Eliminating the first box option will make automatic returns to power less likely and more likely an owner will choose a responsible individual before signing over their proxy.

For example, in our case, the board decided that they would not abide by our By-laws or State law, mixing operating and reserve funds; not doing a proper year-end audit, resulting in money being sent out of state for years before being discovered. If they had not been automatically returned to their positions by the first square ballot option, we would have been able take action much sooner. We could not take them to court because they had our money as well as the association lawyer to defend them. Only after three years of concerted effort were we able to change out the board and employ legal counsel to verify violations of our By-Laws and Hawaii Law and begin to address them.

The condominium boards need to be replaced periodically in order to ensure that they remain honest in dealing with owners. Since there is currently no limit on board terms, I believe that SB 617 will assist associations in 1) dispelling the concentration of power, 2) diminish secrecy, and 3) obviate finger-pointing as a means to shirk responsibility: three ingredients to the tyranny many condo owners experience as a result of old board continuing to reelect themselves via the first box option.

Thank the committee so much for hearing testimony on this crucial issue.

Margaret Goodheart
La Casa Condominium
Honolulu, Hawaii 96815

1001 Bishop Street, Suite 780
Honolulu, Hawaii 96813-3410
February 22, 2011

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
REGARDING SENATE BILL 617

Hearing Date: MONDAY, February 28, 2011
Time : 10:00 A.M.
Place : Conference Room 229

Senator Baker and Members of the Committees,

My name is John Morris and I am testifying against SB 617. I have been involved with condominiums since 1988, when I served as the first condominium specialist with the Hawaii Real Estate Commission (from 1988 to 1991). Since then, I have served as an attorney advising condominium associations for almost 20 years.

1) Is There A Problem?

This bill proposes to delete provisions allowing owners to give their proxies to their board of directors. In doing so, the bill suggests that allowing condominium owners to give their proxies to the board of directors creates so many problems that it justifies amending the law. That does not seem to be the case. Hawaii Real Estate Commission figures indicate that there are 1,665 condominium projects registered with the commission, comprised of 156,428 units, and each of those projects has a board of directors. Given the number of condominium boards, if this issue were truly a serious problem, there would be far more complaints than there appear to be about boards of directors soliciting proxies.

2) Owners Have The Same Proxy Solicitation Rights As Directors.

The bill also suggests that the board somehow has an advantage over individual members of the association in obtaining proxies. In fact, the condominium law, section 514B-123(h), allows every owner to send out, at association expense, a one-page statement asking for proxies or indicating why the owner wants to serve on the board. The law also imposes the same limit on directors using association funds.

3) Concentration Of Power.

The amendments proposed by SB 617 also suggest that it is better to concentrate power into the hands of just a few board members than to the board as a whole.

TESTIMONY REGARDING SENATE BILL 617

February 22, 2011

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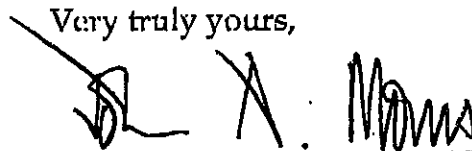
Generally, if the project is run well, that is a result of not just the efforts of a single director, but the efforts of the whole board. Moreover, if owners are satisfied with the way in which their board is running their project, they are inclined to support their board. If, however, owners are not aware of the option of giving their proxy to the board - and think proxies can only be given to individuals - they may be inclined to give their proxy to a single director or officer. For example, if the president (or another officer) signs letters and has his/her name in newsletters, etc., the president may be the only board member known to the average owner. In that case, if the average owner wants to support the board and is not aware that he can give the proxy to the whole board, he may simply give his proxy to the president. In fact, the provisions that are proposed to be deleted by SB 617 were added to prevent this concentration of power in the hands of one or two directors.

4) Delete "Quorum Only" Box Instead.

Finally, if the committee is proposing to simplify the condominium law on proxies, they should instead delete the box giving owners the option of providing their proxy for "quorum purposes only." Allowing owners that option encourages owner apathy by allowing them to take no active interest in association affairs or even to research who could best represent them at an association meeting. Moreover, a high concentration of quorum only proxies often means that an association can go forward with a meeting but cannot do any business. For example, if an association has 59% of people present in person or by proxy and 10% of those proxies are quorum only, that means that only 49% of those represented at the meeting can actually vote in favor or against anything. Since many association votes require the approval of a majority of all owners - i.e., 50.1% of all owners - having only 49% who can actually vote at the meeting prevents the association from doing any significant business. That can require that the meeting be adjourned and that additional time and expense be spent encouraging other owners to also participate in the meeting.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,



John A. Morris

JAM:all

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TESTIMONY

Committee on Commerce and Consumer Protection
Monday, February 28, 2011
Conference Room 229
10:00 a.m.

Chair Baker and members of the committee:

My name is Charles K. Torigoe and I am testifying in favor of SB617.

More often than naught, association board members complain that there is a lack of participation by owners. I believe this to be the reason for including check-off boxes giving proxy to the board to vote on behalf of owners. However, the outcome demonstrated over the years has produced negative results; the precluding of participation by owners interested in becoming a board member.

I have witnessed time and again board members voting themselves back onto the board and concerned owners being shunned in this process. Votes given to the board by proxy ensures that they can remain on the board without regard to the wishes of the owners; it becomes a haven for persons who desire power and will do as they please.

I have been to association meetings where the owners present were disheartened each time when persons they wished to be on the board to represent them were not elected because the board controlled the votes.

I believe that SB617 allows for everyone to be on equal footing when each person is required to solicit proxies in order to be elected to the board. Elections should be open and currently they are not.

Your favorable consideration of this bill will bring integrity to the process which is sorely lacking at this time.

Charles K. Torigoe
Owner, La Casa, Waikiki; Ridgecrest, Mililani

Testimony for CPN 2/28/2011 10:00:00 AM SB617

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: Charles Zahn

Organization: Individual

Address:

Phone:

E-mail: czahn@hawaii.rr.com

Submitted on: 2/26/2011

Comments:

I fully support SB 617 because the removal of these two sections from HRS 514B will prevent the practice of boards using this method to vote their opinions and the members regarding actions taken at the annual meeting. The board's also use this as a means to elect only those individuals that they want to fill vacancies in the board.

There will be those individuals and organizations that will not support bill SB 617.

I also support an ammendment to SB617 to add the same change to HRS 421J (PLANNED COMMUNITY ASSOCIATIONS).

Proposed amendment is attached

1. ~~[(C) To the board of directors as a~~
2. ~~whole and that the vote be made on the~~
3. ~~basis of the preference of the~~
4. ~~majority of the board; or~~
5. ~~(D) To those directors present at the~~
6. ~~meeting and the vote to be shared~~
7. ~~with each board member receiving an~~
8. ~~equal percentage."~~

9. SECTION ~~[2]~~3. Statutory material to be repealed is
10. bracketed and stricken. New statutory material is
11. underscored.

12. SECTION ~~[3]~~4. This Act shall take effect upon its
13. approval.

Report Title:

Condominium Associations and Planned Community Associations;
Proxy Voting

Description:

Reduces checkbox options for a condominium association's and planned community association's standard proxy form by deleting the option's relating to giving proxies to the board as a whole and the directors present at the meeting.

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

Testimony for CPN 2/28/2011 10:00:00 AM SB617

Conference room: 229

Testifier position: support

Testifier will be present: No

Submitted by: gregory swartz

Organization: Individual

Address:

Phone:

E-mail: swartzg001@hawaii.rr.com

Submitted on: 2/22/2011

Comments: