

COMMUNITY ASSOCIATIONS INSTITUTE (CAI)
HB 2158
OPPOSITION

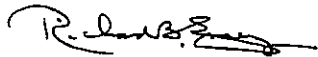
Community Associations Institute (CAI) opposes HB 2159 as it is contradictory to Roberts Rules of Order and creates problems in the administration of a planned community association.

Roberts Rules of Order has been the cornerstone of meeting governance since 1915. It provides procedures in meetings including voting requirements and procedures to object to voting results.

Proxies are issued by homeowners to a homeowner's designated representative and gives authority of the proxy holder to attend the association meeting. At check-in, the proxy holder is issued ballots. At this point, any connection between the proxy holder and the how the secret ballots are voted become unidentifiable. Proxy holders might choose to vote or not to vote; and if they do vote there is no means to determine how they voted. Thus, there will never be any way to connect the effect of an alleged improper proxy and the results of any voting.

The proposed language is vague and leaves much open to debate. Assume a matter is approved by the assembly by an affirmative vote to 100 in favor and 5 against. One proxy is then determined to be in error. Regardless of if or how that proxy voted, it obviously has no affect on the voting results which is not addressed in the Bill. Since no one can determine how a proxy holder voted it opens the door to misuse if someone later changes their mind, as it cannot be proved otherwise.

Again, no one can connect the ballots with the proxy holder as it is be secret ballot. Roberts Rules already deals with voting irregularities and this Bill hinders the proper conducting of a meeting and offers no assurance to the Association on measures adopted are valid and legally binding and that Directors elected are protected by Hawaii Revised Statutes. This Bill may add unnecessary costs to the Association.



Richard Emery

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 06, 2012 9:06 AM
To: HSGtestimony
Cc: jdodson@ebgca.net
Subject: Testimony for HB2158 on 2/8/2012 9:10:00 AM

Testimony for HSG 2/8/2012 9:10:00 AM HB2158

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Jim Dodson
Organization: Ewa by Gentry Community Association
E-mail: jdodson@ebgca.net
Submitted on: 2/6/2012

Comments:

Respectfully submitted: This bill provides for individuals to maliciously submit invalid or incomplete proxies for the express purpose of corrupting the process. All proxies should be verified for representation and veracity at the time of submission. Incomplete proxies should be rejected as invalid or incomplete and returned to the originator, hopefully in time to make the corrections. This will eliminate any purposeful and willful attempt to void a time proven process.



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

February 6, 2012

Rep. Rida T. R. Cabanilla, Chair
Rep. Ken Ito, Vice Chair
House Committee on Housing
Hawaii State Capitol, Room 442
415 South Beretania Street
Honolulu, HI 96813

RE: HB2158; Testimony OPPOSED; Hearing Date: February 8, 2012 9:00 a.m.;
Sent via web and e-mail (HSGtestimony@capitol.hawaii.gov)

Dear Chair Cabanilla, Vice-Chair Ito, 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. HSAP consists of 224 members, making it the 3rd largest group of parliamentarians in the United States.

I am the chair of the HSAP 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 1,300 in 29 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.

The House bill proposes to nullify ballot votes under certain circumstances.

All Planned Community Associations require the current edition of *Robert's Rules of Order Newly Revised* for their meetings. The new 11th edition was released on September 23, 2011 and provided additional guidance regarding various after the fact nullifications of a vote.

The requirement that a board have the power to impose an "adequate remedy" is so ambiguous that it won't truly solve the problem other than to add another level of complexity in any board action or ensuing litigation.

We urge the legislature to avoid micro-management of planned community associations.

The judiciary or the association at a properly called meeting and NOT the board of directors is the entity that ultimately has the power to review association activities relative to a vote and potentially set it aside.

Courts already can review and overturn any voting process if significant errors (such as fraud or forgeries) occur. There are too many combinations to address in what may appear to be a simple bill.

We urge you to hold this bill.

Our committee looks forward to additional discussions of these bills or improvements to any parts of Chapter 421J.

I may be contacted 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: o=Management Info Consultants,
ou=Management Info Consultants, cn=Steve
Glanstein
Date: 2012.02.06 11:04:51 -10'00'

Steve Glanstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee

SG:tbs

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 06, 2012 4:36 PM
To: HSGtestimony
Cc: gomem67@hotmail.com
Subject: Testimony for HB2158 on 2/8/2012 9:10:00 AM

Testimony for HSG 2/8/2012 9:10:00 AM HB2158

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Eric M. Matsumoto
Organization: Mililani Town Association
E-mail: gomem67@hotmail.com
Submitted on: 2/6/2012

Comments:

Corrected testimony: There are a number of issues with this bill, including: If there are By-law changes, implementation would have to be held up for 120 days to preclude any proxy error claims; if there is a homeowner change and a proxy error is found, how does it get corrected?; for "directed" proxies where a "yes" vote is specified but a "no" vote is cast, why is the board responsible? This appears to be single association issue penalizing the >99% for the <1%. PCAs should not be micromanaged when coverage is provided in Roberts Rules of Order. Request this bill be held.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 07, 2012 4:36 PM
To: HSGtestimony
Cc: doneal@mililantown.org
Subject: Testimony for HB2158 on 2/8/2012 9:10:00 AM

Testimony for HSG 2/8/2012 9:10:00 AM HB2158

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: David O'Neal
Organization: Mililani Town Association
E-mail: doneal@mililantown.org
Submitted on: 2/7/2012

Comments:

Thank you for hearing my testimony against HB2158.

I request that this bill be held in committee, as there are many unanswered questions that this bill creates.

What constitutes an adequate remedy, and who decides what is adequate?
What if the invalid proxy has no effect on the outcome of the vote? Why would a re-vote be required?
Why is the Board required to remedy an error, when a proxy is completed by individual homeowners?

Governing documents already address the use of proxies and if there is a deficiency it should be addressed at the Association level to amend the documents. In addition, passage of this bill would essentially stall all Board action that requires a vote of the membership for 120, to allow the deadline to pass so no challenge to a proxy can be made. Lastly I would ask how big of a problem this is to require legislation, versus an individual Association that has struggled with this issue one time?

Again, I urge you to hold this bill and not pass it through your Committee. Thank you.

Dave O'Neal

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 07, 2012 4:39 PM
To: HSGtestimony
Cc: idiaz@mililantown.org
Subject: Testimony for HB2158 on 2/8/2012 9:10:00 AM

Testimony for HSG 2/8/2012 9:10:00 AM HB2158

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Ian Diaz
Organization: Individual
E-mail: idadiaz@mililantown.org
Submitted on: 2/7/2012

Comments:

Thank you for hearing my testimony against HB2158.

I request that this bill be held in committee, as there are many unanswered questions that this bill creates.

What constitutes an adequate remedy, and who decides what is adequate?
What if the invalid proxy has no effect on the outcome of the vote? Why would a re-vote be required?
Why is the Board required to remedy an error, when a proxy is completed by individual homeowners?

Governing documents already address the use of proxies and if there is a deficiency it should be addressed at the Association level to amend the documents. In addition, passage of this bill would essentially stall all Board action that requires a vote of the membership for 120, to allow the deadline to pass so no challenge to a proxy can be made. Lastly I would ask how big of a problem this is to require legislation, versus an individual Association that has struggled with this issue one time?

Again, I urge you to hold this bill and not pass it through your Committee.

Sincerely,
Ian Diaz



Villages of
Kapolei
Association

Honorable Rida Cabanilla
Chair: Housing Committee

Re: HB 2158 Relating to Planned Communities
February 8, 2012
9:10 a.m. Conference Room 325, State Capitol

Chair Cabanilla and Committee Members:

Thank you for allowing me the opportunity to testify in opposition of HB2158. My name is Warren Wegesend. I have been a Certified Property Manager (CPM) for over 40 years. I have managed everything from condominiums, commercial property, Public Housing to planned community associations. I am currently the General Manager of the Villages of Kapolei Association.

HB 2158 proposes to add a new provision dealing with errors in proxy voting. I believe the bill raises more questions than it intends to solve. For instance what constitutes an error? How is a proposed remedy determined to be adequate? 421J already has a provision dealing with proxies. It is very explicit in its form and content. Additionally, Planned Community Associations also have provisions in their documents which address the use of proxies. Proxies are the actions of individual owners delegating their authority to another entity or individual. Why should the Association through its Board be responsible for an error caused by others?

The proposed bill would also render any issue voted with proxies to be effective no sooner than 120 days after the vote.

Thank you for your consideration and allowing me the opportunity to testify. I urge you to hold this bill.

Sincerely,

Warren F. Wegesend, Jr., CPM®
General Manager

Charles E. Zahn
92-970 Puanihi St.
Kapolei, HI 96707-1323

February 5, 2012

To: Committee on Housing
House of Representatives
The Twenty-Sixth Legislature
Regular Session of 2012

Re: HB2158, RELATING TO PLANNED COMMUNITY ASSOCIATIONS.
HB2159, RELATING TO CONDOMINIUMS

Chair Cabanilla, Vice Chair Ito, and members of the Committee on Housing.

My name is Charles Zahn and I am presenting testimony regarding both House Bill 2158 and House Bill 2159.

I strongly support these two bills. They provide remedies in the event of the discovery of an error in any proxy.

Presently the only means to challenge a proxy vote is by mediation.

There is no clear procedure to challenge a proxy vote after 30 days have passed. The proposed language of HB2158 and HB2159 address this issue.

These bills, as proposed additions to the legislation would allow any individual(s) seeking to challenge a proxy vote, up to 120 days to make the challenge and error known. The board then must either institute a remedy or hold another vote to decide the issue on the original ballot within 45 days of being made aware of the error. If no remedy or another vote is held within 45 days of the discovery the results of the vote shall be invalid.

This provides a clear procedure to challenge a proxy vote.

An example of the use of improper proxies:

At an annual association meeting a vote was taken on a motion. This motion required at least two-thirds (2/3) of the total quorum to pass.

Total Quorum of	1080
Non-voting (Quorum only)	148.5556
Necessary to adopt (2/3 of quorum)	720.0000
Votes in favor	722.8889
Votes opposed	208.5556

Thus this motion was passed by 2.8889 votes.

During the review of proxies as allowed by HRS 421J a proxy was found to not meet the requirements of HRS 421J. **§421J-4 Proxies** (b) (2) requires that the proxy contain "at least the name of the association, the date of the meeting of the association, the printed name and signature of the person or persons giving the proxy, the unit or units for which the proxy is given, and the date that the proxy is given; and...". This proxy was not dated.

Removal of this proxy (for 64 lots) would provide the following results to this motion:

Total Quorum of	1016
Non-voting (Quorum only)	148.5556
Necessary to adopt (2/3 of quorum)	677.3333
Votes in favor	658.8889
Votes opposed	208.5556

Thus this motion failed by 18.4444 votes.

This is one that I found that was not dated but was counted as a valid proxy (64 units). I have found more questionable proxies. Some were counted as for the Quorum Only, even though the member did not check any of the four boxes on the proxy. Even those members that checked more than one box on the proxy were counted as Quorum only. Some were given to the Board Majority and Board Equal without a date. Others were assigned to individuals without dates. One member selected the Quorum only box and completed all other requirements but was not counted.

The finding of the improper proxies and the possibility that the motion failed, was not properly addressed. In fact one individual said "To bad, the meeting is over and there is nothing you can do about it."

Therefore I urge you pass out House Bills 2158 and 2159.

Thank you for the opportunity to present this testimony.

Charles E. Zahn

Cell Phone: 808-282-5784

Fax: 808-672-4211