

# SB2465

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Association Meetings

Description: Requires that petitioners have adequate time to address concerns at a requested special association meeting. Prohibits a board to adopt any rule for association meetings that would require a majority of the quorum vote to change.

Companion: HB2394

Package: None

Current Referral: CPN

Introducer(s): FUKUNAGA

<b><u>Sort by</u></b> <b><u>Date</u></b>		<b>Status Text</b>
1/20/2012	S	Introduced.
1/23/2012	S	Passed First Reading.
1/23/2012	S	Referred to CPN.
1/31/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-22-12 9:00AM in conference room 229.



HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS  
LEGISLATIVE COMMITTEE  
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February 21, 2012

Chair: Senator Rosalyn H. Baker  
Vice-Chair: Senator Brian T. Taniguchi  
Committee on Commerce and Consumer Protection  
Hawaii State Capitol, Room 229  
415 South Beretania Street  
Honolulu, HI 96813

**RE: SB2465; Testimony OPPOSED; Hearing Date: 2/22/2012; Sent via web and e-mail ([CPNtestimony@capitol.hawaii.gov](mailto:CPNtestimony@capitol.hawaii.gov))**

Dear Chair Baker, Vice-Chair Taniguchi, 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 3<sup>rd</sup> 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 2000 Legislature previously recognized that "[Hawaii's] condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and **micromanages condominium associations.**" (Emphasis added.) This led to a complete revision of Chapter 514A to a new Chapter 514B.

**The bill proposes to repeat history through micromanagement of condominium associations.**

The bill contains two parts. Each part is addressed separately.

### A. Proposed amendment to HRS §514B-121

This part of the bill proposes to require adequate time during an association special meeting for petitioners to address their concerns.

Although clearly well-intentioned, there are numerous flaws with the bill.

It fails to define "adequate time".

It fails to recognize that association owners are not **compelled** to attend the special meetings.

It subverts the will of the majority of owners present who may want to *Adjourn*.

Here's a couple of examples:

1. Last December 2011, owners turned in a petition. The petition contained various allegations about management and the association. Notwithstanding the withdrawal of several owners from the petition and less than the required 25%, the president decided to call an association special meeting to address these concerns.

The petition misstated the association documents, made accusations against the association's personnel, and accused the president of a crime.

Several other items in the petition could have been presented at a proper board meeting.

Notices were sent out for this association special meeting and there was a meeting on the morning of January 19, 2012. This meeting cost the association several thousands of dollars. Only 27.5878% of the owners were present.

Even though there was no quorum, the special meeting was continued to February 25, 2012, 2 hours before the association's annual meeting.

The board members present listened to two of the petitioners for over an hour, even though they weren't required to.

2. On the evening of January 19, 2012, I went to another special meeting called in respect to a petition. This petition was for the purpose of "discussion and review of the financial status of the association, including but not limited to the 2011 budget and financial statements and the 2012 approved/proposed budget." The petitioners also requested various other financial information.

Notices were sent out for this association special meeting and there was a meeting on the evening of January 19, 2012. Only 53.8% of the owners were present, constituting a quorum.

The items in the petition could have been requested directly from property management.

The discussion of the requested items could have been done at a board meeting or an informational meeting (such as the several informational meetings conducted by at least one of my clients).

Since I was chairing, I was able to obtain the owners' permission (using unanimous consent) to establish an informal discussion period. It was continued several times (by unanimous consent) and then was adjourned after a couple of hours.

*Robert's Rules of Order Newly Revised* governs Association and board meetings.

A proper main motion is normally required before debate can commence. Boards consisting of about 12 members present and committees are more informal; they can debate issues without a pending motion. HRS §514B-125 provides for ownership participation at board meetings. The ownership participation can be limited but many boards provide for a special section for owners' concerns at the start of the meeting.

At an association meeting, owners can propose a motion to consider an issue informally without a pending motion.

Many associations have an owners' forum after their annual meeting in order to obtain information about owners' concerns for the newly elected board. This forum tends to be more relaxed and varies greatly depending upon the association.

The bill provides for petitioners to have "adequate time" but fails to provide the same requirement for the **other owners**.

What if an owner who is not a petitioner makes a motion to *Adjourn* and the majority want to go home?

Should the motion to *Adjourn* be ruled out of order because it wasn't made by a petitioner?

Should the vote on the motion to *Adjourn* be taken only by the petitioners?

When there is a dispute on "adequate time", does the association take a separate vote? Who votes on this motion, all owners or just the petitioners?

Do we need to have legal counsel research this for every condominium association that has a special meeting?

These are just some of the considerations that need to be addressed, either in the legislative process or, unfortunately, in the courts.

## B. Proposed amendment to HRS §514B-123

The bill provides that a board shall not adopt any rules regarding association meetings that require more than a majority of the quorum to change those rules.

I work with over 100 associations and none of their documents specifically provide the board with power to make rules for the association meetings.

Associations adopt their own meeting rules at a properly called meeting. Some of them have high voting requirements. Many associations have overwhelmingly adopted rules limiting taping, non-ownership presence at meetings, expedited approval of the minutes, realistic debate limits, etc.

The creation of a state law that can be interpreted to give boards any power to directly make rules regarding association meetings is clearly erroneous.

Assuming *argumentum* that the original intent was to limit association powers to control their own meetings, there is a parliamentary authority that provides a balance between the rights of the majority to rule and the minority to be heard.

## C. Conclusion

We urge the committee to (a) avoid this level of micro-management without a clear demonstration of a compelling state interest and (b) consider the unforeseen consequences of this bill should it become law.

We urge you to hold this bill.

Our committee looks forward to additional discussions of these bills or improvements to any parts of Chapter 514B.

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**

Digitally signed by Steve Glanstein  
DN: o=Management Info Consultants,  
ou=Management Info Consultants, cn=Steve  
Glanstein  
Date: 2012.02.21 08:58:59 -10'00'

Steve Glanstein, Professional Registered Parliamentarian  
Chair, HSAP Legislative Committee

SG:tbs



February 21, 2012

**TESTIMONY  
SB2465  
OPPOSITION**

Community Association's Institute opposes SB 2465. Roberts Rules of Order as specified in Hawaii Law, has been in existence since 1915.

Rules are established by the members who attend the meeting, not the Board of Directors. Members who attend the meeting can also amend or change the rules.

If a petitioner calls a special meeting, the meeting will be conducted under Roberts Rules of Order, a motion will be required, followed by a debate. Under Roberts Rules of Order debate is defined as 10 minutes per speaker. After the first round of speakers, first time speakers may speak again and so forth.

The members or assembly can amend the rules and establish longer or shorter debate limits, but that requires 2/3 of the member's approval; thus protecting a minority from reduced debate time while presenting their case.

This Bill is on conflict with Roberts Rules of Order, the cornerstone of orderly meeting management. Community Associations institute opposes SB 2465.

Richard Emery

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**Measure:** SB 2465 Relating to Condominiums

**Date and Time of Hearing:** Wednesday, February 22, 2012, 9:00 a.m.

**Committee:** Committee on Commerce and Consumer Protection

I appreciate this opportunity to testify in **support of SB 2465**.

I have attached a list of Condominium Board Presidents, Former Board Presidents, Condominium Board Members, Former Board Members and Owners who support SB 2465.

I would like to draw your attention to **page 1 of SB 2465 and the new language at the bottom of page 1, Section 1.**

In order for condominium owners to request a Special Association Meeting, Chapter 514B-121 requires owners to obtain the signatures of **25%** of all owners in a condominium. This represents a high bar for owners to make a request for a special Association Meeting.

There have to be important issues involved to arouse the owners sufficiently to request a Special Association Meeting. Moreover, it is quite expensive, involving several hundred dollars for the owners who want to hold such a meeting because many condominiums have less than half of their owners who reside in the condominium itself. It takes one or more mailings to other owners to reach the 25% approval level required by the statute.

Once the 25% threshold has been achieved, Special Association Meetings are generally conducted by the condominium Board itself. The current rules generally used for these Special Association Meetings severely limit the rights of those owners who have spent considerable time, effort and money in leading the effort to obtain the signatures needed for the meeting. I have attached on the last page of this testimony the most common rules used for these meetings.

You will notice that **Rule #7 limits the time allowed for those who have conducted the expensive effort to call the meeting so that they are allowed to speak only for two minutes and only speak twice for a total of four minutes.**

If the goal of the Special Association Meeting is to recall the Board, which is a common goal of a Special Association Meeting, this requires 50% of ALL owners to be successful. **It is not reasonable** for the **owners** who have obtained the right to hold the meeting to make the case for removal of the Board in **four minutes**. It should also be noted that the rules I have attached allow **each Board Member** who is subject to the recall **to speak for 10 minutes**. If the entire Board is being removed, assuming a nine member Board, the Board would be allowed **90 minutes to respond** to those owners who have called the meeting.

**The change on page 1 of SB 2465 would require that Boards allow a reasonable amount of time, perhaps up to 20 minutes, for owners who have requested the meeting to make their case.** It should be understood that the agenda for a Special Association Meeting, can only include the item(s) that the requesting owners have included on the agenda. Thus, there is no business allowed at a Special Association Meeting other than the business included on the agenda of the owners who have requested the meeting.

**Turning to page 7 of SB 2465, the change would allow owners who attend any Association Meeting to amend the rules established or proposed for the meeting by a majority of the quorum present at the meeting in person or by proxy.** Currently Condominium Management Companies, with the advice of Parliamentarians, have been arranging for the adoption of permanent rules by owners which bind future owners to those rules. When this happens, it takes two-thirds of **all** owners in a condominium to amend those rules.

At a recent Condominium Special Meeting, a majority of owners tried to amend the rules of the meeting to allow additional time (more than four minutes) for the owners who had called the Meeting but were told by the Parliamentarian that amending the rules to provide additional time required more than half of ALL owners to amend those rules, a virtual impossibility. Thus, even though a majority of the owners wanted to allow the owners who had called the meeting



The wording on page 4 of SB 2465 needs to be amended as follows: "No condominium association shall adopt any rules regarding association meetings that require more than a majority of the quorum to change the rules unless the owners have approved the rules as a by-law amendment."

This amendment is needed because the so called "Permanent Rules" are generally adopted at association meetings where there are no controversial issues, whereas they cripple discussion at meetings involving serious issues that need to be discussed and those permanent rules prevent owners from holding such discussion. If permanent rules are to be adopted, they should be put to the condominium owners as a by-law amendment which will give owners an opportunity to consider in a serious manner the need for such rules.

**We request your approval of SB 2465 as amended.**

*Richard Post*

# **Association Meeting Rules**

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1. Smoking is not permitted in the meeting area.
2. This is a private meeting and attendance is restricted to owners and proxy holders representing owners, staff, and other persons who have been specifically invited by the board. All others are required to leave.
3. Owners desiring to speak must stand and be recognized by the Chairman. Owners must state their **name and unit each time**. The owner must **use the microphone, if available**, so that everybody else can hear.
4. All remarks must be **directed to the Chairman**, not directly to other members. Personal attacks, vulgarity, or offensive language can result in loss of debate privileges.
5. Long and complicated motions must be in writing and delivered to the Chairman, signed by the maker and seconder. This will help avoid confusion and insure that everybody knows the exact wording of the motion.
6. Discussion is normally limited to the motion being considered. Therefore, please don't start a long discussion unless a motion is already pending for consideration.
7. In order to ensure that everybody has a chance to speak, each individual shall have a limit of 2 minutes per speech and a limit of 2 speeches per debatable motion.
8. Nomination and election debate for elected office shall be limited to one speech per nominee (or his/her delegate) for a maximum of 2 minutes per speech.
9. Any board member whose removal is proposed shall have a debate limit of 10 minutes for each of the two speeches. The board member may choose to speak last after all other debate has concluded.
10. Ballot voting on any motion (including the election) will remain open for 10 minutes, (or until the results are announced) unless extended by the owners.
11. No video-taping or other electronic recording is permitted (except for production of the minutes) during any of the proceedings unless first approved by the Association members at the meeting.
12. The board of directors is authorized to approve the minutes of the Association meetings.

## **SUPPOTERS OF**

**Carol Milsop, President, Waikalani Woodlands Condominium**

**Carlton Inasaki, Secretary, Waikalani Woodlands Condominium**

**Dwight Holiday, President, Pakalana Condominium**

**Diane Amuro, Board Member, Pakalana Condominium**

**Richard Port, Former President, Yacht Harbor Towers Condominium**

**Paul Allard, Former Treasurer, Yacht Harbor Towers Condominium**

**Manny Dias, Former President, Naha Condominium**

**Rani Vargas, Secretary, Naha Condominium**

**Alice Clay, Former President, One Kalakaua Condominium**

**Julie Taura, Board Member, One Kalakaua Condominium**

**Jean Patterson, Former President, Spruce Ridge Villas Condominium**

**Laura Brown, Former Treasurer, Spruce Ridge Condominium**

**Dan O'Leary, Former President, Wailana at Waikiki Condominium**

**John Wong, Board Member, Waikiki Banyan Condominium**

**Richard Sparks, Former Board Member, Waikiki Banyan Condominium**

**Robert Fowler, Owner, Holiday Village Condominium**

**Larry Thompson, Owner, Holiday Village Condominium**

**Andrea Bartlett, Owner, Iolani Court Plaza Condominium**

**Amy Amuro, Owner, The Greenwood Condominium**