

SB39,SD1

Testimony



February 23, 2011

Senator Clayton Hee, Chair and Senator Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Opposition to SB 39, SD1 Creating Notice Requirements for Meetings of Planned Community Associations or their Board of Directors

Wednesday, February 23, 2011 at 9:00 a.m. in CR 016

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide testimony **opposing SB 39, SD1** which proposes to create notice requirements for meetings of a planned community association or its board of directors.

SB 39, SD1. This bill creates notice requirements for meetings of planned community associations, and for meetings of the association's board of directors. The SD1 amendment provides that notice of meetings may be provided through posting on a portion of the association's website that is accessible to all its members.

LURF's Position. SB 39, SD1 requires planned community associations to give 14 days' advance notice of any meeting of the association or meeting of the association's board of directors, via process prescribed by this bill. LURF **opposes SB 39, SD1** based on the following:

- **The proposed notice requirements are duplicative of requirements for meetings applicable to non-profit corporations pursuant to Hawaii Revised Statutes (HRS) Chapter 414D, and are therefore unnecessary.**

As non-profit corporations, planned community associations, including their board of directors, are governed by the Hawaii Nonprofit Corporations Act, HRS Chapter 414D, which sets forth notice requirements which are efficient and more comprehensive than that imposed by this bill (See HRS Sections 414D-15, 414D-105, and 414D-145). According to the provisions of Chapter 414D, the procedures by which notice is issued for planned community association and board of director meetings may also be governed by the association's bylaws. Effective notice requirements for association meetings are thus already covered by the existing law and by association bylaws, making this bill unnecessary.

- **The notice requirements proposed by SB 39, SD1 are inconsistent with the requirements contained in HRS Chapter 414D.**

The notice requirements for association meetings proposed by the subject bill are not only duplicative of, but in many respects, conflict with the requirements of HRS Sections 414D15, 414D-105 and 414D-145, including the necessity for notice, the method of notice, the timing of notice, etc., resulting in unnecessary confusion and inconsistency between SB 39, HD1, the existing laws, and the provisions of the bylaws of each planned community association.

- **The implementation of notice requirements proposed by SB 39, SD1 would be cost-prohibitive for most community associations and their board of directors.**

Given the frequency at which many board meetings are held (generally once per month), LURF understands that the cost of complying with the notice requirements contained in SB 39, SD1, including office supplies, postage and staff labor, would be excessive and unaffordable for most planned community associations. Funds derived from maintenance fees and other charges paid by members should more appropriately be used toward items required or desired by the community associations' memberships.

- **The SD1 amendment imposes an unrealistic, unreasonable and cost-prohibitive requirement that the association's website be accessible to all its members.**

Pursuant to the SD1 amendment - If just one member does not have a computer or otherwise does not have access to the association website on a particular day – the association is prohibited from using its website as a legal means of providing notice. To assure that the association can use its website to provide meeting notices, the association would be required to spend unreasonable sums to purchase computers and internet access for each of its members! The SD1 amendments will cause more problems than it would solve!

- **There is no proof that this measure will encourage homeowner participation in governance of planned community associations, and SB 39, was only supported by two members of the public – the overwhelming majority of the public testimony is opposed to SB 39.** The committee report filed by the Senate Commerce and Consumer Protection Committee indicates that only two private individuals testified in support of SB 39, while numerous organizations and individuals testified in opposition.

For the above reasons, it appears that there is no justification to warrant the enactment of SB 39, HD1. LURF therefore respectfully requests that this bill **be held** in Committee.

Thank you for the opportunity to present our testimony regarding this matter.



Mililani Town Association

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February 20, 2011

Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice-Chair
Committee on Judiciary and Labor
State Capitol
Honolulu, HI 96813

VIA E-Mail: JDLTestimony@capitol.hawaii.gov

Re: S.B. No. 39 SD1/OPPOSE
Hearing: Tuesday, February 23, 2011, 9:00am Conf Room 016

Dear Chair Hee, Vice-Chair Shimabukuro 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.

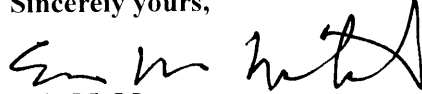
We oppose this measure for the following reasons:

- Page 1, 421J- Notice required. (a): Chapter 414D covers requirements for association meeting notices and is therefore unnecessary. MTA, as noted above, has a membership of approximately 16,000 units. In order to address the issues facing the association, four committees meet monthly prior to the board meeting. These committees are made up of board members and volunteer homeowners who choose to participate. The committees' recommendations are presented to the board for adoption. Because of the variability of board members' schedules, two committee meetings are held in both the first and second weeks. Board meetings have been held in the third week of each month for over fifteen years, for consistency and to preclude conflict with the Neighborhood Board meetings held on Wednesday the fourth week of the month. Further, in emergent circumstances such as storm damage, a committee meeting is at times scheduled just prior to the board meeting if the timing permits or a special board meeting is convened. Passage of SD 1 would invalidate all of the association's board actions for not complying with the fourteen day board meeting notice. The association would not be able to function.
- Page 2, 421J- Notice required. (b)(1): Our Board meetings have been set for the same day of the week each month, the same week each month, at the same time and place.
- Page 2, 421J- Notice Required. (b)(2): Amendments to the declaration and by-laws do not take place during board meetings. Meetings of the association apply in these cases. Additionally, since directors are elected by the membership, only the membership can remove a director, and therefore only during association meetings, unless provided otherwise by the association's documents.

- Page 2, 421J- Notice required. (c): Association documents cover the process to amend those documents or if not covered, Chapter 421J-12 provides a process. Association meetings are meetings of its members, so business items are permitted brought to the floor by its members. However, to maintain order during these meetings, a process for introducing business items is sometimes established by associations.

Based on the above, legislation should not be a one size fits all solution. Further, because of the inappropriately proposed use of board meetings and the redundancy of association meeting requirements already covered elsewhere, we request this bill be deferred.

Sincerely yours,



Eric M. Matsumoto
Vice-President, Board of Directors

Cc: Sen Kidani, Rep Lee, Rep Yamane

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: swartzg001@hawaii.rr.com
Subject: Testimony for SB39 on 2/23/2011 9:00:00 AM
Date: Tuesday, February 22, 2011 1:44:43 AM

Testimony for JDL 2/23/2011 9:00:00 AM SB39

Conference room: 016
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:

While I support the bill, I believe that the posting of the notice on a readily available bulletin board for owner-occupants is sufficient. It is nit sufficient for owners who are not occupants. Additionally, the agenda should clearly indicate all items to be voted on. I really wish our association would have a website. I don't want to speculate as to why it does not in this day and age.

From: [Antonette Port](#)
To: [JDLTestimony](#)
Subject: Testimony SB39 SD1
Date: Monday, February 21, 2011 8:37:31 AM

Testifier: Richard Port
Date of Hearing: Wednesday, February 23, 2011;
Time and Place of Hearing: 9:00 a.m. Conf. Rm #016
Bill Number and Title: SB 39,SD1 Relating to Planned Community Associations

Committee on Judiciary and Labor

Senator Clayton Hee, Chair
Senator Maile S.L, Shimabukuro, Vice Chair

Dear Senators Hee and Shimabukuro,

This is to express my strong support for SB 39, SD1.

The Boards of Directors in Planned Community Associations make important decisions that affect the property of their owners. Often owners are unaware, and do not have an opportunity to express their views, regarding decisions made by their PCA Boards. The current situation is blatantly undemocratic and needs to change.

SB 39 SD 1 provides PCA Boards flexibility in the current language of the bill to choose the manner in which notice of meetings will be provided to their owners. Many Associations will choose to provide notice of meetings by e-mail to owners who are willing to provide their e-mail addresses to their Planned Community Associations. Others will use web-sites for this purpose.

I would not object to a shorter notice requirement if your committee is inclined to make changes to SB 39 SD 1.

In any event, I urge your committee to support SB 39 SD 1.

Thank you for this opportunity to testify in support of SB 39 SD 1.

Richard Port

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: czahn@hawaii.rr.com
Subject: Testimony for SB39 on 2/23/2011 9:00:00 AM
Date: Monday, February 21, 2011 3:48:00 PM

Testimony for JDL 2/23/2011 9:00:00 AM SB39

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Charles Zahn
Organization: Individual
Address:
Phone:
E-mail: czahn@hawaii.rr.com
Submitted on: 2/21/2011

Comments:
I fully support this Bill.

There are those individuals and associations that will oppose the passage of this bill. HRS 415D and HRS 514B will be quoted as being sufficient in the requirements for notice of a board of directors meeting in a planned community.

Chapter 514B is for condominiums and as such is not applicable to Planned Community Associations.

Chapter 414D requirements are directed at annual meetings of members and not the regular meetings of the nonprofits board of directors.

Creation of notice requirements for meetings of a planned community association or its board of directors. There are certain Associations that do not give a written agenda to its members in advance of the meeting. Passage of SB39 will allow the association members advance notice of the agenda and the items on that agenda before the meeting comes to order.