

**kawakami3-Benigno**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 11, 2014 9:59 AM  
**To:** CPCtestimony  
**Cc:** cporter@hawaiiilegal.com  
**Subject:** \*Submitted testimony for HB2214 on Feb 12, 2014 14:10PM\*

**HB2214**

Submitted on: 2/11/2014

Testimony for CPC on Feb 12, 2014 14:10PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christian Porter	Community Association Institute	Support	No

Comments:

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**HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS  
LEGISLATIVE COMMITTEE  
P. O. Box 29213  
HONOLULU, HAWAII 96820-1613  
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February 11, 2014

Honorable Rep. Angus L. K. McKelvey, Chairman  
Consumer Protection and Commerce Committee  
Conference Room 325  
State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

Honorable Rep. Derek S. K. Kawakami, Vice Chair  
House Consumer Protection and Commerce Committee  
Hawaii State Capitol, Room 325  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Testimony in SUPPORT of HB2214; Hearing Date February 12, 2014 at 2:10 p.m.; sent via Internet**

Aloha Chair McKelvey, Vice-Chair Kawakami, and Committee members,

Thank you for the opportunity to provide testimony on this bill on behalf of the Hawaii State Association of Parliamentarians ("HSAP").

This bill proposes to clarify the authority of a board to fill interim vacancies in their membership **only until the next annual or duly noticed special meeting.**

### **A. Historical Perspective**

I was a member of the Blue Ribbon Recodification Advisory Committee that worked on the recodification of Hawaii's Condominium Act in December 31, 2003.<sup>1</sup> The report became SB2210.<sup>2</sup> It eventually became SB2210 SD2 HD1 CD1 (2004) and was signed into law that year as Act 164.<sup>3</sup>

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<sup>1</sup> [http://lrbhawaii.info/reports/legprts/dcca/2004/act213\\_4\\_slh00\\_04.pdf](http://lrbhawaii.info/reports/legprts/dcca/2004/act213_4_slh00_04.pdf)

<sup>2</sup> [http://www.capitol.hawaii.gov/session2004/Bills/SB2210\\_.htm](http://www.capitol.hawaii.gov/session2004/Bills/SB2210_.htm)

<sup>3</sup> <http://www.capitol.hawaii.gov/session2004/status/SB2210.asp>

The original submission in SB2210 (2004) contained the following language:

“§ -106 Board; powers and duties. [...]”

(b) The board may not act on behalf of the association to amend the declaration or bylaws (sections -32(a)(11) and -108(b)(7)), to remove the condominium from the provisions of this chapter (section -47), or to elect members of the board or determine the qualifications, powers and duties, or terms of office of board members (subsection (e)); provided that nothing in this subsection shall be construed to prohibit board members from voting proxies (section -123) to elect members of the board; provided further that the board may fill vacancies in its membership. [...]”

The original bill did not contain a restriction regarding the filling of vacancies.

The Senate Standing Committee Report 2443-04 (2004) from Committee on Commerce, Consumer Protection and Housing amended the bill to SB2210 SD1. They did not change this original wording regarding the fillign of vacancies. However, the report stated in part,

“Your Committee finds that several condominium owners have expressed concerns about proposed law, including concerns that under the proposed measure:[...]”

**(4) The board's authority to fill membership vacancies only on an interim basis is not clarified; [...]**”

(Emphasis added.)

The bill went through the following additional committees without changing the original wording regarding the filling of vacancies:

1. Senate Standing Committee Report 2661-04 (2004) from Committee on Ways and Means [SB2210 SD2].
2. House Standing Committee Report 909-04 (2004) from Consumer Protection and Commerce [SB2210 SD2 HD1].
3. House Standing Committee Report 1289-04 (2004) from House Committee on Finance [SB2210 SD2 HD1].

The limitation on the board filling vacancies was not changed as of SB2210 SD2 HD1.<sup>4</sup>

The bill went to the Conference Committee and the wording was changed in SB2210 SD2 HD1 CD1. **The wording change was to add, “to serve until the next annual or special association meeting.”**

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<sup>4</sup> [http://www.capitol.hawaii.gov/session2004/CommReports/SB2210\\_HD1\\_HSCR909-04\\_.htm](http://www.capitol.hawaii.gov/session2004/CommReports/SB2210_HD1_HSCR909-04_.htm)

Unfortunately, the Conference Committee Report 154-04 (2004) didn't address this issue even though the wording was changed.<sup>5</sup>

SB2210 CD1 (2004) was signed by the governor July 2, 2004 and became Act 164.

## B. Current Situation

During the years following the recodification, there were differing legal interpretations of HRS §514B-106(b). They are:

1. One interpretation was that this section was not meant to override the association's bylaws.
2. The other interpretation was that this section overrode any contrary provisions in the bylaws.

This resulted in litigation (arbitration) at Yacht Harbor Towers. It also resulted in confusion for boards as to whether individuals filling an interim position on the board were up for election.

More importantly, it also provided a methodology for boards to bypass the owners for interim appointments by selecting the appropriate legal counsel.

## C. Recommendation

I recommend the following:

1. The bill be passed such that it clearly establishes that boards may fill interim appointments but only to the next annual or duly noticed special meeting.
2. The committee report make a clear statement of intent that this bill will apply to all condominium associations.

If you require any additional information, your call is most welcome. 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: cn=Steve Glanstein, o, ou, email=Steveghi@Gmail.com, c=US  
Location: Honolulu, HI  
Date: 2014.02.11 12:45:55 -10'00'

Steve Glanstein, Professional Registered Parliamentarian  
Chair, HSAP Legislative Committee

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<sup>5</sup> [http://www.capitol.hawaii.gov/session2004/CommReports/SB2210\\_CD1\\_CCR154-04\\_.htm](http://www.capitol.hawaii.gov/session2004/CommReports/SB2210_CD1_CCR154-04_.htm)

**kawakami3-Benigno**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 10, 2014 7:24 PM  
**To:** CPCtestimony  
**Cc:** twalkey@clearwire.net  
**Subject:** Submitted testimony for HB2214 on Feb 12, 2014 14:10PM

**HB2214**

Submitted on: 2/10/2014

Testimony for CPC on Feb 12, 2014 14:10PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ted Walkey	Individual	Oppose	No

Comments: Condominium bylaws cover the removal and replacement of directors.

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## kawakami3-Benigno

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 11, 2014 7:41 AM  
**To:** CPCtestimony  
**Cc:** rglanstein@gmail.com  
**Subject:** Submitted testimony for HB2214 on Feb 12, 2014 14:10PM

### HB2214

Submitted on: 2/11/2014

Testimony for CPC on Feb 12, 2014 14:10PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel Glanstein	Individual	Support	No

Comments: Aloha, I'm in favor of the proposed amendment to the condominium law included in HB2214. It appears to me that the provision contained within HRS 514B-106(b) is a limit of the board's power. The board is not allowed to elect its own members to circumvent the power of the owners. However, a board would be handicapped with vacancies and therefore the board was empowered to fill vacancies until the next annual or special meeting. Some attorneys have opined that this section means the board may also fill vacancies for the remainder of the term. In order to clarify that the intent is to only allow the board to fill vacancies so that the board can function until the owners have the chance to fill the seats, please approve HB2214. This will make it clear to all that the board cannot usurp the right of the owners to elect board members and can only fill vacancies until the owners meet. I am both a professional parliamentarian and a condo board member myself. As a parliamentarian, I've seen battles start because the owners felt disenfranchised that the board chose to fill a seat for the remainder of the term rather than let the owners declare their choice for board member. As a board member, I would rather give the owners their deserved opportunity to choose their own representatives at their meetings. Again, I urge you to support HB2214. Mahalo, Rachel M. Glanstein, PRP

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## kawakami3-Benigno

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**From:** Nicky Brockman <monicky@gmail.com>  
**Sent:** Tuesday, February 11, 2014 11:24 AM  
**To:** CPCtestimony  
**Subject:** HB2214 Testimony

Comments: Aloha, I have lived at my condominium complex in Kona since 1999, and I have been on the BOD for the last 10 years. I am in favor of the proposed amendment to the condominium law included in HB2214.

This board has repeatedly taken away the power of the owners by replacing board members by board decision. I have always been knowledgeable about the fact that vacant positions on the board may be filled by an appointment by board decision, and that at the next annual meeting, the association will vote the board members of their choice onto the BOD for the remainder of the term. When I reminded the BOD of this, they decided to ignore it, and not make these positions available for the Association at the Annual Meeting we just held.

Again, this month, a position was filled by board decision majority and their intent is for this person to finish the complete term of this position, without giving all 367 homeowners a chance to refill this position at the next Annual Meeting in 2015.

It appears to me that the provision contained within HRS 514B-106(b) is a limit of the board's power to elect new members and take away the power of the owners. However, if the board has any vacancies, it has the ability to fill vacancies until the next annual or special meeting of the Association.

In order to stop the BOD's from voting, usually with a bias for close friends or family, and give the right back to the owners of the whole Association, please approve HB2214.

We need concrete clarification, especially when attorneys interpret this rule according to their own personal opinions, or the opinions imposed to them by the Boards who employ them

As a board member, I have always represented all owners of the Association, and other board members have abused this service by imposing their personal agendas.

HB2214, would give that power back to its rightful owners, so I definitely support this bill and I implore you to vote for it.

Mahalo,

John M. Brockman & Nicky Brockman (previous BOD director)

Alii Lani Townhomes

Kailua-Kona

**kawakami3-Benigno**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 11, 2014 6:07 PM  
**To:** CPCtestimony  
**Cc:** jsugimura@bendetfidell.com  
**Subject:** Submitted testimony for HB2214 on Feb 12, 2014 14:10PM



**HB2214**

Submitted on: 2/11/2014

Testimony for CPC on Feb 12, 2014 14:10PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jane Sugimura	Hawaii Council of Associations of Apt. Owners dba HCCA	Comments Only	No

Comments: HCAAO does not object to the revision at line 11 of the bill that reflects an insertion of the word "only"; however, it is concerned about the 2nd proposed revision that would insert the words "duly noticed" at line 13 because this would not allow owners who wanted to run for the Board to declare their intention and to solicit proxies for the election.

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