



February 18, 2014

## HB 2656 – SUPPORT WITH AMENDMENTS

Dear Representatives,

I am submitting testimony on behalf of the Legislative Action Committee of Community Associations Institute (CAI). HB 2656 addresses to important issues condominiums face today. **Please find attached proposed amendment language that CAI supports to accomplish the Bill's intent.** Also, as President of Hawaii First one of Hawaii's largest association management companies, I also support HB 2656 with the amendments attached.

**Annual Meeting Quorum:** A loophole in the current law allows directors to serve without having to stand for reelection. The bylaws of a condominium provide for an annual meeting; a meeting where directors are reelected and a mandatory tax resolution to file the association's income tax is adopted. If the association fails to obtain a quorum, often a board declares that they conducted the annual meeting with a result of no quorum and no business. The boards wait another year before scheduling the next annual meeting. Thus a director whose term has expired never stands for reelection and serves beyond their term. There are examples where such practice has occurred for years, particularly when a board in under fire for its decisions by homeowners. Boards have some ability to influence a quorum by the process they take to solicit proxies. The unintended consequence is that the association never approves its tax resolution for the tax-free rollover over of its funds which potentially imposes a future tax liability on the association. HB2656 mandates a second meeting within 90 days and reasonably reduces quorum assuring that directors will stand for reelection at the end of their term. Requiring an annual meeting and thus an election is a fundamental obligation of an association.

**Managing Agent Employment:** There is an alarming trend in new associations where bylaws provide difficult or in some cases impossible circumstances for a board to terminate the Managing Agent. I have attached two examples of many of association bylaws that exemplify the problem. In these examples, the board has no authority to terminate a management contract without the prior vote of the majority of all homeowners, and in some cases as much as 80% of all homeowners. Clearly the board is charged with the fiduciary duty in the management of the association and should be free from constraints to make business decisions for the benefit of the association. In every new association, the owners inherited the Managing Agent and were not involved with the initial selection by the developer. A Managing Agent is no more than a business that should earn its contract through its efforts and trust of the board. The board will be most knowledgeable about its every day dealings with the Managing Agent. On the other hand, boards serve the homeowners, and of a majority of homeowners want a new Managing Agent the board should be required to comply.





COMMUNITY ASSOCIATION MANAGEMENT

Queen's Court « 800 Bethel Street, Suite 501 « Honolulu, Hawaii 96813

Our proposed amendment to HB 2656 allows the board (the Principal) to employ and discharge the Managing Agent while respecting the rights of homeowners to require a management change. This issue is best addressed with a new Section 514B-107, HRS as attached. 514B-104 HRS should not be revised.

Community Associations Institute SUPPORTS HB 2656 with the amendments attached.

Sincerely,

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

Richard Emery  
CAL Legislative Action Committee &  
President, Hawaii First, Inc.



## A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

the association is unable to obtain

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 514B, Hawaii Revised Statutes, is  
2 amended by adding a new section to subpart B of part VI to be  
3 appropriately designated and to read as follows:  
4 "§514B- Association meetings; failure to obtain a  
5 quorum. (a) If a quorum is not present at the first annual  
6 meeting of the association in any year, then the association  
7 shall continue the meeting at least once for no more than ninety  
8 days.  
9 (b) If the association does not continue the first meeting  
10 pursuant to subsection (a), then the board of directors shall  
11 call a continuation of the annual meeting within ninety days.  
12 (c) The quorum requirement at the continued meeting shall  
13 be reduced to one-half of the requirement as stated in the  
14 bylaws."

15 ~~SECTION 2. Section 514B-104, Hawaii Revised Statutes, is~~  
16 ~~amended by amending subsection (a) to read as follows:~~

HB HMS 2014-1335



See suggested alternative and substitute language re Section 514B-107, HRS, attached hereto. Section 514B-104, HRS, should not be revised.

- 1        "(a) Except as provided in section 514B-105, and subject  
2 to the provisions of the declaration and bylaws, the  
3 association, even if unincorporated, may:
- 4        (1) Adopt and amend the declaration, bylaws, and rules and  
5                regulations;
  - 6        (2) Adopt and amend budgets for revenues, expenditures,  
7                and reserves and collect assessments for common  
8                expenses from unit owners, subject to section  
9                514B-148;
  - 10       (3) Hire and discharge ~~[managing agents and other]~~  
11               independent contractors, agents, and employees;
  - 12       (4) Institute, defend, or intervene in litigation or  
13               administrative proceedings in its own name on behalf  
14               of itself or two or more unit owners on matters  
15               affecting the condominium. For the purposes of  
16               actions under chapter 480, associations shall be  
17               deemed to be "consumers";
  - 18       (5) Make contracts and incur liabilities;
  - 19       (6) Regulate the use, maintenance, repair, replacement,  
20               and modification of common elements;
  - 21       (7) Cause additional improvements to be made as a part of  
22               the common elements;



- 1 (8) Acquire, hold, encumber, and convey in its own name  
2 any right, title, or interest to real or personal  
3 property; provided that:
- 4 (A) Designation of additional areas to be common  
5 elements or subject to common expenses after the  
6 initial filing of the declaration or bylaws shall  
7 require the approval of at least sixty-seven per  
8 cent of the unit owners;
- 9 (B) If the developer discloses to the initial buyer  
10 in writing that additional areas will be  
11 designated as common elements whether pursuant to  
12 an incremental or phased project or otherwise,  
13 the requirements of this paragraph shall not  
14 apply as to those additional areas; and
- 15 (C) The requirements of this paragraph shall not  
16 apply to the purchase of a unit for a resident  
17 manager, which may be purchased with the approval  
18 of the board;
- 19 (9) Subject to section 514B-38, grant easements, leases,  
20 licenses, and concessions through or over the common  
21 elements and permit encroachments on the common  
22 elements;



- 1 (10) Impose and receive any payments, fees, or charges for  
2 the use, rental, or operation of the common elements,  
3 other than limited common elements described in  
4 section 514B-35(2) and (4), and for services provided  
5 to unit owners;
- 6 (11) Impose charges and penalties, including late fees and  
7 interest, for late payment of assessments and levy  
8 reasonable fines for violations of the declaration,  
9 bylaws, rules, and regulations of the association,  
10 either in accordance with the bylaws or, if the bylaws  
11 are silent, pursuant to a resolution adopted by the  
12 board that establishes a fining procedure that states  
13 the basis for the fine and allows an appeal to the  
14 board of the fine with notice and an opportunity to be  
15 heard and providing that if the fine is paid, the unit  
16 owner shall have the right to initiate a dispute  
17 resolution process as provided by sections 514B-161,  
18 514B-162, or by filing a request for an administrative  
19 hearing under a pilot program administered by the  
20 department of commerce and consumer affairs;
- 21 (12) Impose reasonable charges for the preparation and  
22 recordation of amendments to the declaration,



- 1 documents requested for resale of units, or statements  
2 of unpaid assessments;
- 3 (13) Provide for cumulative voting through a provision in  
4 the bylaws;
- 5 (14) Provide for the indemnification of its officers,  
6 board, committee members, and agents, and maintain  
7 directors' and officers' liability insurance;
- 8 (15) Assign its right to future income, including the right  
9 to receive common expense assessments, but only to the  
10 extent section 514B-105(e) expressly so provides;
- 11 (16) Exercise any other powers conferred by the declaration  
12 or bylaws;
- 13 (17) Exercise all other powers that may be exercised in  
14 this State by legal entities of the same type as the  
15 association, except to the extent inconsistent with  
16 this chapter;
- 17 (18) Exercise any other powers necessary and proper for the  
18 governance and operation of the association; [and]
- 19 (19) By regulation, subject to sections 514B-146, 514B-161,  
20 and 514B-162, require that disputes between the board  
21 and unit owners or between two or more unit owners  
22 regarding the condominium be submitted to nonbinding



1 alternative dispute resolution in the manner described  
 2 in the regulation as a prerequisite to commencement of  
 3 a judicial proceeding[-]; and  
 4 (20) Notwithstanding any provision of law to the contrary,  
 5 beginning July 1, 2014, review the hiring or continued  
 6 employment of a managing agent at an association  
 7 meeting. A managing agent may be discharged subject  
 8 to review under this paragraph if voted on by a  
 9 majority of unit owners present at an association  
 10 meeting. Managing agents discharged under this review  
 11 shall be employed on a month-to-month basis until a  
 12 replacement managing agent is employed."

13 SECTION 3. Statutory material to be repealed is bracketed  
 14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect on July 1, 2014.

16

INTRODUCED BY: K. Oll  
TOM Bunn

JAN 23 2014



**SECTION 2. Section 514B-107, Hawaii Revised Statutes, is amended by adding new section (g), (h), and (i), to read as follows:**

(g) Notwithstanding any provision of the declaration and bylaws, the board of an association managed by a managing agent shall have the authority to employ and terminate a managing agent subject to subsection (h).

(h) Such employment may be terminated by vote of a majority of the unit owners at an association meeting. If the employment is terminated, the ]managing g agent contract will continue for no longer than three months from the date of termination, and the board shall employ a different managing agent.

(i) An association where a majority of units are a member of a time share organization and regulated by HRS 514E is exempt from subsection (g) and (h).

# H.B. NO. 2656

**Report Title:**

Condominium Associations; Managing Agent; Condominium Boards

**Description:**

Establishes provisions for condominium association annual meetings and quorum requirements. Provides that condominium associations may call for the review and discharge of a managing agent hired by the association upon a majority vote by the association members present. Effective July 1, 2014.

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

HB HMS 2014-1335



Partial List of Abuses that might require Legislation – Page 4 of 6 pages

(1) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice;

(2) A decision not to renew the Management Contract cannot be made by the Board alone; the Board has no power or authority to do so; and

(3) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice before a Majority of the Owners vote not to renew the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

**E. CANCELLATION BY THE ASSOCIATION.** The Management Contract must give the Association the right to cancel in each of the following situations:

**1) FOR CAUSE.** The Association must have the right to cancel the Management Contract whenever the Managing Agent breaches or fails to observe or perform a material part of the Management Contract and fails to cure its breach or default within the time permitted by the Management Contract;

**2) WITHOUT CAUSE.** The Association must have the right to cancel the Management Contract on not more than sixty (60) days' written notice. The Management Contract may provide that the Association cannot give this notice of cancellation unless (i) the Board recommends such action, and (ii) 80% of the Owners vote to do so at an annual or special meeting of the Association held within one year before such notice of cancellation. If the Management Contract contains such a provision, then:

(a) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice of cancellation;

(b) A decision to cancel cannot be made by the Board alone; the Board has no power or authority to do so; and

(c) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice of cancellation before a Majority of the

Owners vote to cancel the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

**F. CANCELLATION BY THE MANAGING AGENT.** The Management Contract must provide that Managing Agent has the right to cancel the Management Contract on not more than sixty (60) days' written notice.

**G. FEES.** The Management Contract must specifically state the fees to be paid to the Managing Agent by the Association. The fees do not have to be stated as a dollar amount. For example, the management fee may be set to a percentage of the Project's Common Expenses or to cost plus a percentage profit.

**H. BOND.** From time to time, the Managing Agent must provide evidence satisfactory to the Board that the Managing Agent is bonded under a fidelity bond in the minimum amount required by the Condominium Property Act.

**7.3 EMPLOYMENT OF RESIDENT MANAGER.** The Board may also employ a resident manager or may cause the Managing Agent to do so. In either case, the Board will set the compensation of any resident manager. The Board may delegate to the resident manager any of its powers and duties except those that, by law or under the Condominium Documents, it cannot delegate.

**7.4 LIMITATIONS ON AUTHORITY TO ENTER INTO CONTRACTS.** Neither the Association nor the Managing Agent may enter into a contract with someone else to furnish goods or services for the Common Elements or to the Association for a period longer than one year unless authorized by the vote or written consent of a Majority of the Owners Voting. The Developer must abstain from this vote. This rule does not apply, however, to:

- ❖ The Management Contract.
- ❖ A contract with a public utility company if the rates charged by it are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term the supplier will accept at the regulated rate.
- ❖ Prepaid casualty and/or liability insurance policies not lasting more than three years, provided that the policy permits "short-rate cancellation" by the insured.

Partial List of Abuses that might require Legislation – Page 1 of 6 pages

1. Bylaws of the Association of Apartment Owners of Hokuia at 1288 Ala Moana Document number 3023804, Dated November 6, 2003, pages 15-16 (See item 7)

of the Association in litigation, arbitration, mediation, or administrative proceedings in matters relating to (i) enforcement of the Condominium Documents; (ii) damage to the Common Elements to the extent that the Association is obligated to maintain and repair it; (iii) damage to any part of any Apartment to the extent that the Association is obligated to maintain and repair it; or (iv) damage to the Apartments which arises out of, or is integrally related to, damage to any the Common Elements or to any part of any Apartment to the extent that the Association is obligated to maintain and repair them. If the Board or an Owner requests mediation of a dispute, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If the Board or an Owner refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding costs and attorneys' fees.

**7.2 MANAGING AGENT.**

**A. MANAGING AGENT.** The Association must hire and at all times it must have a Managing Agent.

**B. QUALIFICATIONS.** The Managing Agent must be properly registered with the Real Estate Commission of the State of Hawaii. The Managing Agent may be the Developer or an affiliate of the Developer.

**C. SELECTION.** The Developer has the right to choose and employ the first Managing Agent for the Project. (At the outset, the Developer is the only Member of the Association.) If the first Managing Agent must be replaced for any reason, the Board will choose the replacement. The Board must use its best efforts to hire and keep a responsible company as the Managing Agent.

**D. MANAGEMENT CONTRACT.** The Managing Agent must sign a written contract (the "Management Contract"). Subject to the requirements of the Condominium Property Act:

**1) POWERS AND DUTIES.** The Management Contract may delegate to the Managing Agent any of the Board's powers and duties except those that, by law or under the Condominium Documents, it cannot delegate. It may also permit the Managing Agent to delegate its power and duties to one or more sub-agents for any period and upon any terms it deems proper. In all cases, the Managing Agent and any sub-agents will be subject to the

direction of the Board and to the limits listed in Section 7.4.

**2) TERM. The Management Contract:**

(a) May provide for an initial term of not more than one year from the Starting Date. The "Starting Date" is the date on which the Managing Agent must begin its performance. Unless otherwise provided in the Management Contract, the Starting Date will be the later of (i) the first date on which a deed of an Apartment is recorded, or (ii) the first date on which the City and County of Honolulu issues a temporary or permanent certificate of occupancy for an Apartment in the Project.

(b) May provide that after the first term and each later term ends, the contract will be renewed automatically unless a written notice canceling the Management Contract is sent by either party at least sixty (60) days before the renewal date. The Management Contract may provide that the Association cannot give this notice unless a Majority of the Owners vote to do so at an annual or special meeting of the Association held within one year before the renewal date. If the Management Contract contains such a provision, then:

(1) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice;

(2) A decision not to renew the Management Contract cannot be made by the Board alone; the Board has no power or authority to do so; and

(3) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice before a Majority of the Owners vote not to renew the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

**E. CANCELLATION BY THE ASSOCIATION.** The Management Contract must give the Association the right to cancel in each of the following situations:

**1) FOR CAUSE.** The Association must have the right to cancel the Management Contract whenever the Managing Agent breaches or fails to observe or perform a material part of the Management Contract and fails to cure its breach or default within the time permitted by the Management Contract;





**HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS  
LEGISLATIVE COMMITTEE  
P. O. Box 29213  
HONOLULU, HAWAII 96820-1613  
E-MAIL: [HSAP.LC@GMAIL.COM](mailto:HSAP.LC@GMAIL.COM)**

February 19, 2014

Honorable Rep. Sylvia Luke, Chair  
Honorable Rep. Aaron Ling Johanson, Vice Chair  
Honorable Rep. Scott Y. Nishimoto, Vice Chair  
House Committee on Finance  
Hawaii State Capitol, Room 308  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Testimony with COMMENTS regarding HB2656 HD1; Hearing Date February 20, 2014 at 12:00 p.m.; sent via Internet**

Aloha Chair Luke, Vice-Chairs Johanson and Nishimoto, and Committee members,

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

I will address the larger issues presented by this bill below:

**A. Section 1 -- Association Meetings; Failure to obtain a quorum**

The bylaws of many condominium associations provide for annual meetings. At these meetings, reports are provided, directors are usually elected, a tax resolution is adopted, and there may be borrowing or expense related resolutions.

There are a few considerations associated with annual meetings that lead to the requirement for associations to have functioning annual meetings:

1. Many developers have handicapped associations through the use of boiler plate bylaws with unrealistic quorum amounts and voting procedures for official association action. This has caused difficulty in conducting business at annual meetings.
2. A few boards have simply decided that the effort and expense of continuing an annual meeting in order to obtain a quorum cannot be financially justified.
3. A few boards have used the failure to obtain a quorum as a mechanism to continue their term in office.<sup>1</sup>

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<sup>1</sup>This can backfire for the same board because a no quorum meeting would provide that more positions are up for election in a subsequent year, making a complete takeover

4. There is a risk that the Internal Revenue Service will impose taxes on a condominium association for failure to formally adopt when it known as a rollover resolution.

The wording in HB2656 HD1, Section 1 is problematic because it doesn't entirely solve the problem.

**We worked with the Hawaii Chapter of the Community Associations Institute (CAI) to draft wording that was more precise. The wording is highlighted on the bill that is attached to these comments.**

## **B. Section 2 -- Relating to Managing Agents**

The proposed wording completely changes the responsibility for “reviewing and discharging” a managing agent from a board of directors to a majority of members present at an association meeting.

**The current wording in Section 2 presents the antithesis of good management and will have a completely negative effect on condominiums throughout the state.**

A Managing Agent is a vendor with a fiduciary relationship to the association. The Managing Agent receives direction from the board of directors. The board of directors has a duty to take care of and act on behalf of the association.

A condominium association is not a plebiscite where the members at an association meeting decide every element of the management agreement.

A further problem exists with developer imposed bylaws that make it nearly impossible for either a board or the association to discharge a managing agent. For example, one association's bylaws make it impossible for the board to fire a managing agent without prior notice at an association meeting **and** an 80% vote of the owners.

We heard concerns in the House Committee hearing about the differences between time-sharing and condominiums regarding this issue. Therefore, an exception has been proposed for associations which contain a majority of time-share units.

We propose the following:

1. The board must remain responsible for the hiring, supervising, and discharging a managing agent.
2. At an annual or a properly noticed special meeting, the owners by “vote of a majority of the unit owners” will have a simple right to reject a managing agent. This rejection shall act as an order for the board to find a different managing agent within a limited period of time.

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by a temporary majority at the next annual meeting more likely.

3. This section would not apply to an association where a majority of the units are part of a time-sharing organization and regulated by the HRS Chapter 514E.

A majority of the unit owners currently has the power to remove and replace the entire board [HRS §514B-106(f)]. The voting requirement in the proposed change makes sense because it already provides for new management through a complete replacement of a board. That same voting level could easily extend to the board's subsequent removal of a managing agent

**We believe this balances (a) the board's responsibility for hiring a proper managing agent with (b) the association's right to exercise veto power in a way that doesn't become micro-management.**

**We worked with the CAI to draft wording that was more in line with this principle. The wording is attached to these comments on the last page.**

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: 2014.02.19 11:31:16 -10'00'

Steve Glanstein, Professional Registered Parliamentarian  
Chair, HSAP Legislative Committee  
SG:tbs/Attachment

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# A BILL FOR AN ACT

INSERT - see new  
Section 1 attached hereto.

CONDOMINIUMS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 514B-104, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) Except as provided in section 514B-105, and subject  
4 to the provisions of the declaration and bylaws, the  
5 association, even if unincorporated, may:

6 (1) Adopt and amend the declaration, bylaws, and rules and  
7 regulations;

8 (2) Adopt and amend budgets for revenues, expenditures,  
9 and reserves and collect assessments for common  
10 expenses from unit owners, subject to section  
11 514B-148;

12 (3) Hire and discharge ~~[managing agents and other]~~  
13 independent contractors, agents, and employees;

14 (4) Institute, defend, or intervene in litigation or  
15 administrative proceedings in its own name on behalf  
16 of itself or two or more unit owners on matters  
17 affecting the condominium. For the purposes of





1 actions under chapter 480, associations shall be  
2 deemed to be "consumers";  
3 (5) Make contracts and incur liabilities;  
4 (6) Regulate the use, maintenance, repair, replacement,  
5 and modification of common elements;  
6 (7) Cause additional improvements to be made as a part of  
7 the common elements;  
8 (8) Acquire, hold, encumber, and convey in its own name  
9 any right, title, or interest to real or personal  
10 property; provided that:  
11 (A) Designation of additional areas to be common  
12 elements or subject to common expenses after the  
13 initial filing of the declaration or bylaws shall  
14 require the approval of at least sixty-seven per  
15 cent of the unit owners;  
16 (B) If the developer discloses to the initial buyer  
17 in writing that additional areas will be  
18 designated as common elements whether pursuant to  
19 an incremental or phased project or otherwise,  
20 the requirements of this paragraph shall not  
21 apply as to those additional areas; and



1 (C) The requirements of this paragraph shall not  
2 apply to the purchase of a unit for a resident  
3 manager, which may be purchased with the approval  
4 of the board;

5 (9) Subject to section 514B-38, grant easements, leases,  
6 licenses, and concessions through or over the common  
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- 1 heard and providing that if the fine is paid, the unit  
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22 this State by legal entities of the same type as the





1 association, except to the extent inconsistent with  
2 this chapter;  
3 (18) Exercise any other powers necessary and proper for the  
4 governance and operation of the association; ~~[and]~~  
5 (19) By regulation, subject to sections 514B-146, 514B-161,  
6 and 514B-162, require that disputes between the board  
7 and unit owners or between two or more unit owners  
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9 alternative dispute resolution in the manner described  
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15 meeting. A managing agent may be discharged subject  
16 to review under this paragraph if voted on by a  
17 majority of unit owners. Managing agents discharged  
18 under this review shall be employed on a month-to-  
19 month basis until a replacement managing agent is  
20 employed."





1       SECTION 2. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.  
3       SECTION 3. This Act shall take effect on July 1, 2050.

INSERT - see new Section 2 attached hereto



**SECTION 1. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to subpart B of part VI to be appropriately designated and to read as follows:**

**“§514B- \_\_\_\_ Association meetings; failure to obtain a quorum. (a) If the association is unable to obtain a quorum at the first annual meeting of the association in any year, then the association shall continue the meeting at least once for no more than ninety days.**

**(b) If the association does not continue the first meeting pursuant to subsection (a), then the board of directors shall call a continuation of the annual meeting within ninety days.**

**(c) The quorum requirement at the continued meeting shall be reduced to one-half the requirement as stated in the bylaws.”**

**SECTION 2. Section 514B-107, Hawaii Revised Statutes, is amended by adding new subsections (g), (h), and (i), to read as follows:**

(g) Notwithstanding any provision of the declaration and bylaws, the board of an association managed by a managing agent shall have the authority to employ and terminate a managing agent subject to subsection (h).

(h) Such employment may be terminated by vote of a majority of the unit owners at an association meeting. If the employment is terminated, the managing agent contract will continue for no longer than three months from the date of termination, and the board shall employ a different managing agent.

(i) An association where a majority of units are a member of a time share organization and regulated by Chapter 514E HRS is exempt from subsection (g) and (h).



P.O. Box 976  
Honolulu, Hawaii 96808

February 19, 2014

Honorable Sylvia Luke, Chair  
Honorable Scott Y. Nishimoto, Vice Chair  
Honorable Aaron Ling Johanson, Vice Chair  
Committee on Finance  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **HB 2656 H.D. 1/SUPPORT WITH SUGGESTED AMENDMENTS**

Dear Chair Luke, Vice-Chairs Nishimoto and Johanson and Committee Members:

I am the Chair of the Community Associations Institute's Legislative Action Committee ("CAI"). CAI, which represents the association industry in this State, **supports HB 2656 H.D. 1 with the Amendments attached hereto and as recommended by Richard Emery in his testimony of February 18, 2014, submitted on behalf of CAI.**

**Problem for associations to reach quorum and perpetuation of "rollover boards".**

This Bill (*together with the amendments*) addresses the issue of many condominium associations being unable to conduct annual ownership meetings because of the "quorum requirements." The two most important issues that typically need to be addressed at these annual meetings are the election of directors and adopting the "tax rollover" resolution so that association can maintain its non-profit status. This Bill provides a mechanism so that this will happen on an annual basis and not allow for "rollover boards" (*i.e.*, boards that continue without elections).

**Allowing for boards to hire and terminate the managing agent as they are responsible for managing the day-to-day operations of the association.** The other issue addressed by this Bill (*together with the amendments*) focuses on giving the power to association boards to terminate and enter into management company contracts. Not all condominium associations have this provision in their governing documents and many times there is a requirement of ownership approval of such termination or retention. This requirement is an unnecessary "hurdle" for association boards as they are mandated to administer the association's property and manage those that are hired to handle the day-to-day functions of the association. It is only logical that all condominium boards have the right to hire and terminate all contractors, employees and agents, including managing agents. The Bill does this as amended.

The amendments also provide a "safety net" or voice to the owners in the event that a majority of unit owners disagrees with the board's retention of a managing agent.



Honorable Sylvia Luke, Chair  
Honorable Scott Y. Nishimoto, Vice Chair  
Honorable Aaron Ling Johanson, Vice Chair  
February 19, 2014  
Page 2 of 2

The current version of this Bill will "lock in" management companies and not allow them to be terminated by the principal, the board or association, without a vote of the owners. This is a huge problem in that it is already hard for associations to reach quorum to conduct a meeting to elect directors. The current amendment is a step backwards for associations and the managing of their assets.

Thank you for your time and consideration, and we respectfully request the Committee pass **HB 2656 H.D. 1 with the proposed amendments**. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "C. Porter", with a long horizontal flourish extending to the right.

Christian P. Porter

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# A BILL FOR AN ACT

INSERT - see new  
Section 1 attached hereto.

CONDOMINIUMS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 514B-104, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) Except as provided in section 514B-105, and subject  
4 to the provisions of the declaration and bylaws, the  
5 association, even if unincorporated, may:

6 (1) Adopt and amend the declaration, bylaws, and rules and  
7 regulations;

8 (2) Adopt and amend budgets for revenues, expenditures,  
9 and reserves and collect assessments for common  
10 expenses from unit owners, subject to section  
11 514B-148;

12 (3) Hire and discharge ~~[managing agents and other]~~  
13 independent contractors, agents, and employees;

14 (4) Institute, defend, or intervene in litigation or  
15 administrative proceedings in its own name on behalf  
16 of itself or two or more unit owners on matters  
17 affecting the condominium. For the purposes of



1 actions under chapter 480, associations shall be  
2 deemed to be "consumers";  
3 (5) Make contracts and incur liabilities;  
4 (6) Regulate the use, maintenance, repair, replacement,  
5 and modification of common elements;  
6 (7) Cause additional improvements to be made as a part of  
7 the common elements;  
8 (8) Acquire, hold, encumber, and convey in its own name  
9 any right, title, or interest to real or personal  
10 property; provided that:  
11 (A) Designation of additional areas to be common  
12 elements or subject to common expenses after the  
13 initial filing of the declaration or bylaws shall  
14 require the approval of at least sixty-seven per  
15 cent of the unit owners;  
16 (B) If the developer discloses to the initial buyer  
17 in writing that additional areas will be  
18 designated as common elements whether pursuant to  
19 an incremental or phased project or otherwise,  
20 the requirements of this paragraph shall not  
21 apply as to those additional areas; and



1 (C) The requirements of this paragraph shall not  
2 apply to the purchase of a unit for a resident  
3 manager, which may be purchased with the approval  
4 of the board;

5 (9) Subject to section 514B-38, grant easements, leases,  
6 licenses, and concessions through or over the common  
7 elements and permit encroachments on the common  
8 elements;

9 (10) Impose and receive any payments, fees, or charges for  
10 the use, rental, or operation of the common elements,  
11 other than limited common elements described in  
12 section 514B-35(2) and (4), and for services provided  
13 to unit owners;

14 (11) Impose charges and penalties, including late fees and  
15 interest, for late payment of assessments and levy  
16 reasonable fines for violations of the declaration,  
17 bylaws, rules, and regulations of the association,  
18 either in accordance with the bylaws or, if the bylaws  
19 are silent, pursuant to a resolution adopted by the  
20 board that establishes a fining procedure that states  
21 the basis for the fine and allows an appeal to the  
22 board of the fine with notice and an opportunity to be





- 1 heard and providing that if the fine is paid, the unit  
2 owner shall have the right to initiate a dispute  
3 resolution process as provided by sections 514B-161,  
4 514B-162, or by filing a request for an administrative  
5 hearing under a pilot program administered by the  
6 department of commerce and consumer affairs;
- 7 (12) Impose reasonable charges for the preparation and  
8 recordation of amendments to the declaration,  
9 documents requested for resale of units, or statements  
10 of unpaid assessments;
- 11 (13) Provide for cumulative voting through a provision in  
12 the bylaws;
- 13 (14) Provide for the indemnification of its officers,  
14 board, committee members, and agents, and maintain  
15 directors' and officers' liability insurance;
- 16 (15) Assign its right to future income, including the right  
17 to receive common expense assessments, but only to the  
18 extent section 514B-105(e) expressly so provides;
- 19 (16) Exercise any other powers conferred by the declaration  
20 or bylaws;
- 21 (17) Exercise all other powers that may be exercised in  
22 this State by legal entities of the same type as the



1 association, except to the extent inconsistent with  
2 this chapter;  
3 (18) Exercise any other powers necessary and proper for the  
4 governance and operation of the association; ~~[and]~~  
5 (19) By regulation, subject to sections 514B-146, 514B-161,  
6 and 514B-162, require that disputes between the board  
7 and unit owners or between two or more unit owners  
8 regarding the condominium be submitted to nonbinding  
9 alternative dispute resolution in the manner described  
10 in the regulation as a prerequisite to commencement of  
11 a judicial proceeding[-]; and  
12 (20) Notwithstanding any provision of law to the contrary,  
13 beginning July 1, 2014, review the hiring or continued  
14 employment of a managing agent at an association  
15 meeting. A managing agent may be discharged subject  
16 to review under this paragraph if voted on by a  
17 majority of unit owners. Managing agents discharged  
18 under this review shall be employed on a month-to-  
19 month basis until a replacement managing agent is  
20 employed."



1       SECTION 2. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.  
3       SECTION 3. This Act shall take effect on July 1, 2050.

INSERT - see new Section 2 attached hereto



**Report Title:**

Condominium Associations; Managing Agent; Condominium Boards

**Description:**

Provides that condominium associations may call for the review and discharge of a managing agent hired by the association upon a majority vote by the association members. Effective July 1, 2050. (HB2656 HD1)

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





**SECTION 1. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to subpart B of part VI to be appropriately designated and to read as follows:**

**“§514B- \_\_\_ Association meetings; failure to obtain a quorum. (a) If the association is unable to obtain a quorum at the first annual meeting of the association in any year, then the association shall continue the meeting at least once for no more than ninety days.**

**(b) If the association does not continue the first meeting pursuant to subsection (a), then the board of directors shall call a continuation of the annual meeting within ninety days.**

**(c) The quorum requirement at the continued meeting shall be reduced to one-half the requirement as stated in the bylaws.”**

**SECTION 2. Section 514B-107, Hawaii Revised Statutes, is amended by adding new section (g), (h), and (i), to read as follows:**

(g) Notwithstanding any provision of the declaration and bylaws, the board of an association managed by a managing agent shall have the authority to employ and terminate a managing agent subject to subsection (h).

(h) Such employment may be terminated by vote of a majority of the unit owners at an association meeting. If the employment is terminated, the managing agent contract will continue for no longer than three months from the date of termination, and the board shall employ a different managing agent.

(i) An association where a majority of units are a member of a time share organization and regulated by HRS 514E is exempt from subsection (g) and (h).

**House Finance Committee**  
**Thursday, February 20, 2014**  
**12:00 pm, Conf Rm 308**

Rep. Sylvia Luke, Chair  
Rep. Scott Nishimoto, Vice Chair  
Rep. Aaron Ling Johanson, Vice Chair

RE: **Testimony In Support of HB 2656**, Relating to Condominiums

I **support HB 2656** because it would provide more tools to allow condo owners the ability to enforce open and honest self-governance in their condos.

Condo owners have had a lot of problems with getting information in a timely manner from the Condo Board and Managing Agent, including Board Meeting Minutes (which are supposed to be readily available to owners) and budget & accounting information. Owners often are not provided with detailed information on how the vendors were selected by the Board or allowed to review the executed vendor contracts.

Owners are often given only verbal information on upcoming projects then a notice is posted on the bulletin board to let all of the residents know when the repair or renovation work will begin. Although owners have inquired, they often do not know if the company the Board hired has any prior complaints filed against them; have the necessary insurance or bond to cover the project; and have the required state professional licenses or certificates to do the job.

The Managing Agent has a fiduciary responsibility to guide the volunteer Condo Board on ethical and legal practices and is supposed to have the knowledge & skills to provide technical assistance as needed. Dealing with an unscrupulous Managing Agent and/or Board is very time-consuming and can be quite expensive.

I would like to emphasize that deceptive business practices such as giving false statements to the owners, showing photos & diagrams that misrepresent the situation, and providing inaccurate projected expenses or budgets are not legal. I believe the kinds of problems condo owners are sharing with the Legislature this Session are way beyond mediation and probably warrant class action litigation.

What I don't understand is the Attorney General's Office has instituted many policies & procedures in recent years to crack down on deceptive business practices for 501(c) 3, Charitable Organizations. So, why are Condo Boards and Managing Agents allowed to run rampant at this time? Condo Associations are 501 (c) 4, Non-profit entities so shouldn't they have to follow the same policies and procedures instituted by the Attorney General's Office?

The HREC has consistently responded to condo owner's complaints, with they are not authorized to investigate and enforce HRS, CH 514B, which addresses Condominium Boards and its Managing Agents. Who is supposed to have the oversight and management duties for the scams, fraud and mismanagement of funds instigated by the Condo Boards and/or its Managing Agent?

Condo owners cannot self-govern effectively if they are not provided timely information and effective tools that may impact their safety & well-being. Condo owners need more tools, such as the ability to discharge the Managing Agent, regular Management Audits and regular reviews of the Condo By-laws to be able to enforce their own self-governance. HB 2656 would be instrumental for many condo owners to increase their ability to enforce self-governance.

In closing, I humbly ask all of you to **please pass HB 2656** because it would be a step in the right direction in providing condo owners more tools to protect themselves from unscrupulous Managing Agents and Condo Boards.

Thank you very much for your time and attention to this matter.

Respectfully Submitted By:

**Laurie Hirohata**

Email: [lhrohata@gmail.com](mailto:lhrohata@gmail.com)



# An Open Letter to Moana Pacific Homeowners

## Dear Homeowners:

We are reaching out to you both as the developer of Moana Pacific and as fellow unit owners.

In the last two years, our Association of Apartment Owners (AOAO), Board of Directors has continually bombarded us with unsubstantiated threats of imminent catastrophe related to our PEX potable water system. Repeatedly, the Board has tried to force upon us, without a vote or our consent, a hefty \$10 million loan to unjustifiably re-pipe the entire system of both towers. In addition, the Board has imposed substantial special assessments on us (a remarkable sum of \$1.69 million so far) on avoidable attorney and consultant expenses.

The time has come for us to decide for ourselves. Let us begin by asking some important questions.

## Should Moana Pacific re-pipe entire buildings when, for 6 years, NO PEX water leaks or catastrophic failures have occurred?

- We cannot trust the AOAO Board's consultant when he made a mistake about the composition of the PEX plumbing system at Moana Pacific and where his findings are not scientifically sound.
- His 2011 report foreseeing imminent catastrophic failures in our system, erroneously referred to clamps, which have never been part of Moana Pacific's system.
- The consultant exaggerated his initial findings and just recently, after near two years, announced that he has finished his work. He has not submitted a new or revised report.
- The AOAO Board could not have adequately assessed the validity of the consultant's work (filing suit on the same day of the preliminary report submission). Furthermore, the Board did not seek

any second opinion and failed to act after learning that the consultant's initial report was erroneous and incomplete.

- The AOAO Board has refused to reconsider its course and has pushed for a complete re-pipe without assessing all available information since learned and without considering other options.
- Moana Pacific's PEX system, has a 25 year warranty, and is not the same product as other Honolulu buildings with plumbing issues. In fact, some of those projects have replaced their systems with one similar to Moana Pacific's system.
- A well-recognized expert recently concluded that the Moana Pacific PEX system is "functional and up to required standards"; "provides a very reliable potable water system at Moana Pacific"; and has stated that "you will not see any leak or failure in the foreseeable future."

## Can we trust the AOAO Legal Team when its reputation was tainted by misrepresentation?

- In a letter of informal admonition against one of the AOAO's attorneys, from the Office of Disciplinary Counsel, dated February 12, 2013, "The Disciplinary Board Member determined that Mr. Agena violated HRPC 4.1 when he knowingly made a false statement of material fact or law to a third person on March 10, 2012, during a presentation to the homeowners of Moana Pacific."
- The attorney asserted that the Court had ruled that there were code violations in the Moana Pacific's PEX system. However, the Court did NOT make such a ruling.
- The attorneys have pressed to move forward with litigation, even though the Court has repeatedly ordered that the AOAO must comply with the Contractors' Repair Act process.

## Can we afford to borrow and spend millions of dollars for repairs that may not be necessary and continue to pay for exorbitant legal fees?

- The AOAO Board repeatedly tried to borrow \$10 million, (in February and May, 2012, and again in January, 2013). Every time, the Court disapproved.
- So far the AOAO Board has spent \$1.69 million in legal fees; with another \$600,000 budgeted for 2013.

## How can the AOAO Board be responsible and accountable?

- The Board should not manipulate the "high-risk component" clause to bypass owners and act on their own agenda (especially when there is no emergency).
- It must allow owners to decide whether any repair is warranted and, if so, to make their own repairs, and decide on their own financing, if necessary.
- Board members should proactively move forward in the right direction – diligently and objectively, assess information and research findings and obtain the owners' input and consent.
- Board meetings should be open. Board decisions should be well-founded and transparent.
- The Board must abide by the Contractor's Repair Act process, as ordered by the Court.

## What can homeowners do to resolve the PEX controversy and protect their interests?

- Exercise your right to vote.
- Attend meetings and seek timely and accurate information.
- Engage your neighbors to increase awareness.
- Insist on transparency and accountability from the AOAO Board.
- Elect Board members who are diligent, prudent and objective.

## Participate, Vote and Monitor.

For details, visit [moanapacificinfo.com](http://moanapacificinfo.com).

From KC Rainbow Development LLC, Developer

## New Twists & Turns

### AOAO Board, Consultant and Attorney Now Under Fire

Now in the forefront and under the limelight are AOAO Board's doubtful actions, and the cred-





## AOAO Board, Consultant and Attorney Now Under Fire

Now in the forefront and under the limelight are AOAO Board's doubtful actions, and the credibility of its consultant and attorney. Moana Pacific PEX has receded from center stage – no water leakage and no catastrophic failure have occurred.

Has the AOAO Board acted appropriately? It repeatedly asked homeowners, to consent to a \$10 million loan to re-pipe the building. The Board did not seek a second opinion. It solely relied on its consultant who admitted in Court depositions, that he did only 3 tests, far less than the 8 he falsely claimed. The consultant claimed that clamps in PEX systems were defective, but Moana Pacific's PEX system does not have clamps. Without past or imminent emergency, the Board insisted on the high risk component clause and deprived homeowners the right to vote. Furthermore, its attorney, Mel Agena, made false statements to homeowners and was admonished by the Office of Disciplinary Counsel. He told homeowners that the Court had ruled that there were code violations in Moana Pacific's PEX system. In fact, the Court did not rule.



Moana Pacific

## Questions for Moana Pacific Owners to Consider

**Q: Does the “high risk component” statute allow the Board to unilaterally impose a \$10 million debt upon homeowners?**

A: Absolutely not. (Google Hawaii Revised Statutes

**its consultant and legal team?**

A: No. The consultant has admitted to making mistakes and rendering opinions without first completing testing.

The Board's counsel was reprimanded by the Office of the Disciplinary Counsel for misrepresenting material facts to homeowners.

**Q: Do you think that a water leak exists in the Moana Pacific PEX system?**

A: No, there is no report of any leak at Moana Pacific

**further legal/professional fees, with apparent benefit?**

A: No, we have already spent \$1.69 million, with an additional \$600,000 already budgeted for 2013.

**Q: Do we have options?**

A: Yes. We should heed the Court's repeated orders to comply with the Contractor's Repair Act process (HRS Chapter 672E). This should have been completed before suit was filed. We also need to consider all available data

## Next Steps for Owners & AOAO Board

### Moana Pacific Home Owners

- Attend Board meetings ~ Ask questions ~ Obtain complete and accurate information
- Engage your neighbors ~ Educate yourself on key issues ~ Make informed decisions
- Exercise your voting rights ~ Elect objective Board members ~ Control spending

### Moana Pacific AOAO Board

- Follow the provisions of the Hawaii Contractor's Repair Act as ruled by the Court
- Re-assess data and investigative reports with due diligence and objectivity
- Engage owners in the decision-making process
- Be transparent
- Allow owners to have a



right to vote. Furthermore, its attorney, Mel Agena, made false statements to homeowners and was admonished by the Office of Disciplinary Counsel. He told homeowners that the Court had ruled that there were code violations in Moana Pacific's PEX system. In fact, the Court did not rule.



Moana Pacific

## Questions for Moana Pacific Owners to Consider

**Q: Does the "high risk component" statute allow the Board to unilaterally impose a \$10 million debt upon homeowners?**

A: Absolutely not. (Google Hawaii Revised Statutes Section 514B-138.)

**Q: Should the Board continue to blindly follow the advice of**

**its consultant and legal team?**

A: No. The consultant has admitted to making mistakes and rendering opinions without fully completing testing. The Board's counsel was reprimanded by the Office of the Disciplinary Counsel for misrepresenting material facts to homeowners.

**Q: Do you think that a water leak exists in the Moana Pacific PEX system?**

A: No, there is no report of any leak at Moana Pacific due to the PEX system.

**Q: Can we afford the costly and substantial burden of**

**further legal/professional fees, with apparent benefit?**

A: No, we have already spent \$1.69 million, with an additional \$600,000 already budgeted for 2013.

**Q: Do we have options?**

A: Yes. We should heed the Court's repeated orders to comply with the Contractor's Repair Act process (HRS Chapter 672E). This should have been completed before suit was filed. We also need to consider all available data, be better informed and more engaged in the decision-making process.

## Next Steps for Owners & AOA Board

### Moana Pacific Home Owners

- Attend Board meetings ~ Ask questions ~ Obtain complete and accurate information
- Engage your neighbors ~ Educate yourself on key issues ~ Make informed decisions
- Exercise your voting rights ~ Elect objective Board members ~ Control spending
- Monitor board decisions ~ Demand accountability and transparency

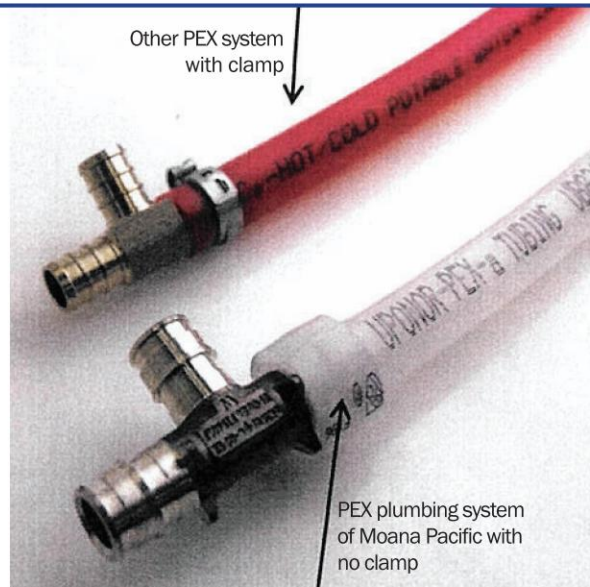
### Moana Pacific AOA Board

- Follow the provisions of the Hawaii Contractor's Repair Act as ruled by the Court
- Re-assess data and investigative reports with due diligence and objectivity
- Engage owners in the decision-making process
- Be transparent
- Allow owners to have a voice in their future and to vote on whether capital expenditures are needed

## Moana Pacific PEX System Passes Critical Testing

In June, 2012, the attorney for KCR Development LLC retained Dr. Behzad Bavarian to conduct a comprehensive scientific study on Moana Pacific's PEX system. Dr. Bavarian is a material / metallurgical engineering professor on the faculty of California State University at Northridge. He has 30 years' of experience in his specialized field of corrosion studies. In 2012, he received the NACE International Technical Achievement Award from the National Association of Corrosion Engineers, being recognized by his colleagues for his outstanding contribution in his field.

Based upon extensive scientific testing and related life modeling, completed in October, 2012, Dr. Bavarian has determined:



**PEX system for Moana Pacific with no clamp and other PEX system with clamp.**

- The brass fittings in Moana Pacific's PEX system meet or exceed all applicable international and national industry standards.
- The brass fittings have and will continue to maintain their physical shape and size. Even under excessive water pressure testing, the fittings remained properly joined to the piping.
- Metallurgical analysis and Micro-hardness measurements prove that the brass fittings have no internal defects or cracks and have not been compromised in their mechanical strength and integrity or their ability to perform.
- The corrosion/dezincification rate of the brass fittings is minimal and will decrease over time. Extensive analysis data results for modeling to determine the life use of these fittings confirms that the fittings will continue to perform for at least fifty (50) years, and possibly as long as one hundred (100) years.

For details, visit [moanapacificinfo.com](http://moanapacificinfo.com).



CHARLES E. PEAR, JR.

DIRECT #S:  
PHONE - (808) 223-1212  
FAX - (808) 535-8029  
E-MAIL - PEAR@M4LAW.COM

February 20, 2014

**LATE**

Rep. Sylvia Luke, Chair  
Rep. Scott Y. Nishimoto, Vice Chair  
Rep. Aaron Ling Johanson, Vice Chair  
Members of the Committee on Finance  
Twenty-Seventh Legislature  
Regular Session, 2014

Re: H.B. 2656  
Hearing on February 20, 2014, 12:00 p.m.  
Conference Room 308

Dear Chair, Vice-Chair and Members of the Committee:

My name is Charles Pear. I am appearing as legislative counsel for ARDA Hawaii.

ARDA Hawaii opposes the bill as presently drafted. ARDA Hawaii is currently having productive discussions regarding proposed revisions with some of the other stakeholders. A copy of the most recent draft of the stakeholders is attached.

The bill as currently drafted would apply to time share condominiums.

In recent years, most time share resorts have been developed and are operated by major hospitality brands such as Disney, Westin, Hilton, Marriott and so on. In virtually every case, an affiliate of the brand owner serves as the managing agent of the condominium.

In addition, most of these hospitality companies own and operate a vacation club that allows owners of time share interests in a Hawaii resort to exchange their Hawaii use rights for the right to use other time share plans in their vacation club. For example, an owner in Disney's Aulani resort may choose instead to stay in the Animal Kingdom time share plan at Walt Disney World.

If the managing agent is discharged, however, then the project will no longer be branded as a Disney, Westin, Hilton or Marriott resort. In addition, the resort will no longer be a participating resort in the company's vacation club.

In time share plans, it is very common for only a handful of owners to attend a meeting of the association of owners. Under the bill as presently drafted, if a dozen owners attend a meeting



Chair, Vice-Chairs and Members,  
House Committee on Finance  
February 20, 2014  
Page 2

and seven of them vote to terminate the management agreement, then the project would lose its branding and *all* of the owners could lose their rights to participate in the vacation club.

This is a very important decision for the members of a time share plan. While there may be valid reasons for an association to terminate its management agreement, such a decision should not be made without the consent of at least a majority of all of the owners, not just a majority of the handful that attend an association meeting.

For the foregoing reasons, ARDA opposes the bill at least as to a time share plan. We fully understand that circumstance may differ for a condominium used as a principal residence by the owners who live in the project. But if the committee is inclined to advance the bill, we ask that you require that the vote of a majority of all the owners, not just a vote of a majority of owners present, be required in the case of a time share condominium.

Thank you for your kind consideration of this legislation. I would be happy to take any questions if you think that I may be of assistance.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

A handwritten signature in black ink, appearing to read 'Charles E. Pear, Jr.', with a stylized flourish extending to the right.

Charles E. Pear, Jr.

## Proposed Revised Bill

SECTION 1. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to subpart B of part VI to be appropriately designated and to read as follows:

**"§514B- Association meetings; failure to obtain a quorum.**

(a) If the association is unable to obtain a quorum at the first annual meeting of the association in any year, then the association shall continue the meeting at least once for no more than ninety days.

(b) If the association does not continue the first meeting pursuant to subsection (a), then the board of directors shall call a continuation of the annual meeting within ninety days.

(c) The quorum requirement at the continued meeting shall be reduced to one-half of the requirement as stated in the bylaws."

SECTION 2. Chapter 514B, Hawaii Revised Statutes, is amended to amend Section 514B-107 by adding new subsections (g), (h) and (i), to read as follows:

"(g) Notwithstanding any provision of the declaration and bylaws, the board of an association managed by a managing agent shall have the authority to employ and terminate a managing agent subject to subsection (h).

(h) Such employment may be terminated by vote of a majority of the unit owners at an association meeting. If the employment is terminated, the managing agent contract will continue for no longer than three months from the date of termination, and the board shall employ a different managing agent.

(i) The provisions of subsections (g) and (h) shall not apply to a project in which a majority of the units have been submitted to one or more vacation plans, or in which one or more units has been submitted to a vacation plan established by the developer of the project or by an affiliate of the developer.

For purposes of this subsection (i): (1) "majority of the units" means units to which are appurtenant more than fifty per cent of the common interests appurtenant to all units, other than any commercial units, in the project; and (2) a "vacation plan" is a plan or program that constitutes a time share plan subject to chapter 514E, or that would constitute a time share plan subject to chapter 514E but for the fact that the period during which the owners have the right to use, occupy or possess the units in the plan equals or exceeds sixty days per year."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2014.