



P.O. Box 976
Honolulu, Hawaii 96808

March 27, 2014

Honorable Karl Rhoads, Chair
Honorable Sharon E. Har, Vice Chair
House Committee on Judiciary
Conference Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **SB 2483 SD1 HD1/ SUPPORT**

Dear Chair Rhoads, Vice-Chair Har and Committee Members:

I am the Chair of the Community Association Institutes' Legislative Action Committee ("CAI"). CAI supports SB 2483 SD 1 HD1 for the following reasons.

First, §514B -146, HRS, was amended during the 2013 Legislative Session so that Condominium Association's 6-month "super priority lien" or special assessment would be paid upon closing of a foreclosure sale. Although the intent was clear when the language was revised for this purpose, a word – "purchaser" – was dropped from the final language.

This has created a problem in that one or more title companies are taking the position that the Association's 6-month special assessment right or super priority lien rights only apply to a lender foreclosing on a property and being the highest bidder, but if a third-party is the highest bidder the 6-month special assessment is "wiped out" and not paid.

The *proposed revisions seek to correct this error*; therefore, CAI supports this.

Second, *Part II of this Bill will help reduce disputes* over the issue of whether a vacancy on a Condominium Board that is filled by the Board – pursuant to the Association's governing documents and State law – will only serve until the Association's next annual meeting, or for the remainder of the term of that director seat. This language will *clear up the controversy over this topic*. For this reason, CAI supports Part II.

Honorable Karl Rhoads, Chair
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CAI represents the association industry, and **supports the passage of SB 2483 SD1 HD1**. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'CP', with a long horizontal flourish extending to the right.

Christian P. Porter



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

March 26, 2014

Honorable Rep. Karl Rhoads , Chairman
Honorable Rep. Sharon E. Har, Vice Chair
House Committee on Judiciary
Conference Room 325
State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in SUPPORT of SB2483 SD1 HD1; Hearing Date March 28, 2014 at 2:00 p.m.; sent via Internet

Aloha Chair Rhoads, Vice-Chair Har, and Committee members,

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

We express no opinion on Part I of the bill.

Part II of the 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.**

We support this part and ask that it be passed unamended. For your information the wording in Part II of the bill is the same as the wording in HB2482 HD1 SD1 section 4.

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, 2003.¹ The report became SB2210.² It eventually became SB2210 SD2 HD1 CD1 (2004) and was signed into law that year as Act 164.³

¹ http://lrbhawaii.info/reports/legprts/dcca/2004/act213_4_slh00_04.pdf

² http://www.capitol.hawaii.gov/session2004/Bills/SB2210_.htm

³ <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 filling 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 HD1.⁴

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.”**

⁴ http://www.capitol.hawaii.gov/session2004/CommReports/SB2210_HD1_HSCR909-04_.htm

Unfortunately, the Conference Committee Report 154-04 (2004) didn't address the issue of whether board could only fill vacancies "to serve until the next annual or special association meeting" even though the wording was changed.⁵

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 interim positions were up for election.

More importantly, the current situation provides a methodology for boards to bypass owners for interim appointments by selecting the appropriate legal counsel.

C. Recommendation

I recommend that the committee pass the bill with a clear statement in the committee report that the intent of this part is for the bill to 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. 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: 2014.03.26 15:53:59 -10'00'

Steve Glanstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee

⁵ http://www.capitol.hawaii.gov/session2004/CommReports/SB2210_CD1_CCR154-04_.htm