DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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DEPUTY DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2015

TUESDAY, APRIL 7, 2015
2:05 P.M.

TESTIMONY ON SENATE BILL NO. 826 S.D.1 H.D.1
RELATING TO CONDOMINIUMS

TO THE HONORABLE KARL RHOADS, CHAIR,
AND TO THE HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 826 S.D.1 H.D.1, Relating to Condominiums. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following comments on the bill, with requested amendments.

Senate Bill No. 826 S.D.1 H.D.1 amends Chapter 514B, Hawaii Revised Statutes ("HRS"), to enhance the efficiency of self-governance in condominium living by: 1) requiring that a duly noticed annual meeting is held on the island

where the association is located and at a site convenient and easily accessible; 2) requiring a reduced annual meeting quorum at the third attempt to obtain quorum; 3) limiting the time between the first adjourned annual meeting and the third adjourned annual meeting to no more than ninety days; 4) limiting association business at a reduced quorum annual meeting to the adoption of a tax resolution and the election of a board of directors for positions expired or expiring; 5) authorizing the board of a condominium association to terminate a managing agent's contract upon a majority vote of the association of unit owners, except within certain commercial or other projects; 6) requiring a condominium association with fifty or more units to prepare its budget on an accrual basis in accordance with generally accepted accounting principles; and 7) requiring the use of standardized forms prescribed or approved by the Real Estate Commission ("Commission") for records requests.

Senate Bill No. 826 S.D.1 H.D.1 is intended to address concerns raised by condominium unit owners relating to annual meeting quorum requirements and managing agents. RICO believes that Senate Bill No. 826 S.D.1 H.D.1 may help improve the self-governance process for condominium unit owners by clarifying their rights on such significant issues as location and quorum for annual meetings, business conducted at annual meetings, managing agent employment, and requests for association records.

Senate Bill No. 826 S.D.1 H.D.1 requires the use of forms prescribed or approved by the Commission for requests for records from unit owners. See page

10, lines 10-12. The Senate Draft 1 version required the use of forms prescribed or approved by the Commission for both requests for records from unit owners and for responses from associations. See page 10, lines 12-15 of Senate Bill No. 826 S.D.1. The use of prescribed or approved forms is intended to expedite the records disclosure process for the benefit of unit owners and associations and will assist RICO in its investigations of complaints involving allegations that an association has failed to respond to a records request. As such, RICO respectfully asks that language requiring the use of forms prescribed or approved by the Commission for associations' responses to records requests be re-inserted in the bill.

RICO also notes that Senate Bill No. 826 S.D.1 H.D.1 requires a reduced quorum at a third adjourned annual meeting, whether or not quorum is achieved at that third adjourned annual meeting. See page 4, lines 4-8. The Senate Draft 1 version of the bill also provided for a reduced quorum at the third adjourned annual meeting, but only when there was no quorum at that meeting. To ensure that the quorum requirement would be reduced only after quorum is not achieved at the third adjourned annual meeting, RICO respectfully requests that the phrase "if quorum is not achieved" from the Senate Draft 1 version be restored on page 4, lines 4-8.

Thank you for the opportunity to testify on Senate Bill No. 826 S.D.1 H.D.1. I will be happy to answer any questions that the members of the Committee may have.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2015

THURSDAY, APRIL 2, 2015
2:00 P.M.

TESTIMONY ON SENATE BILL NO. 826 S.D.1 H.D.1
RELATING TO CONDOMINIUMS

TO THE HONORABLE KARL RHOADS, CHAIR,
AND TO THE HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 826 S.D.1 H.D.1, Relating to Condominiums. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following comments on the bill, with requested amendments.

Senate Bill No. 826 S.D.1 H.D.1 amends Chapter 514B, Hawaii Revised Statutes ("HRS"), to enhance the efficiency of self-governance in condominium living by: 1) requiring that a duly noticed annual meeting is held on the island

where the association is located and at a site convenient and easily accessible; 2) requiring a reduced annual meeting quorum at the third attempt to obtain quorum; 3) limiting the time between the first adjourned annual meeting and the third adjourned annual meeting to no more than ninety days; 4) limiting association business at a reduced quorum annual meeting to the adoption of a tax resolution and the election of a board of directors for positions expired or expiring; 5) authorizing the board of a condominium association to terminate a managing agent's contract upon a majority vote of the association of unit owners, except within certain commercial or other projects; 6) requiring a condominium association with fifty or more units to prepare its budget on an accrual basis in accordance with generally accepted accounting principles; and 7) requiring the use of standardized forms prescribed or approved by the Real Estate Commission ("Commission") for records requests.

Senate Bill No. 826 S.D.1 H.D.1 is intended to address concerns raised by condominium unit owners relating to annual meeting quorum requirements and managing agents. RICO believes that Senate Bill No. 826 S.D.1 H.D.1 may help improve the self-governance process for condominium unit owners by clarifying their rights on such significant issues as location and quorum for annual meetings, business conducted at annual meetings, managing agent employment, and requests for association records.

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10, lines 10-12. The Senate Draft 1 version required the use of forms prescribed or approved by the Commission for both requests for records from unit owners and for responses from associations. See page 10, lines 12-15 of Senate Bill No. 826 S.D.1. The use of prescribed or approved forms is intended to expedite the records disclosure process for the benefit of unit owners and associations and will assist RICO in its investigations of complaints involving allegations that an association has failed to respond to a records request. As such, RICO respectfully asks that language requiring the use of forms prescribed or approved by the Commission for associations' responses to records requests be re-inserted in the bill.

RICO also notes that Senate Bill No. 826 S.D.1 H.D.1 requires a reduced quorum at a third adjourned annual meeting, whether or not quorum is achieved at that third adjourned annual meeting. See page 4, lines 4-8. The Senate Draft 1 version of the bill also provided for a reduced quorum at the third adjourned annual meeting, but only when there was no quorum at that meeting. To ensure that the quorum requirement would be reduced only after quorum is not achieved at the third adjourned annual meeting, RICO respectfully requests that the phrase "if quorum is not achieved" from the Senate Draft 1 version be restored on page 4, line 4.

Thank you for the opportunity to testify on Senate Bill No. 826 S.D.1 H.D.1. I will be happy to answer any questions that the members of the Committee may have.

Hawaii Council of Associations of Apartment Owners
DBA: Hawaii Council of Community Associations
1050 Bishop Street, #366, Honolulu, Hawaii 96813

April 3, 2015

Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice-Chair
House Committee on Judiciary

Re: Testimony in Support with Comments
SB826 SD2, HD1 RELATING TO CONDOMINIUMS
Hearing: Tues., April 7, 2015, 2:00 p.m., Conf. Rm. #325

Chair Rhoads, Vice-Chair San Buenaventura and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA).

HCAAO supports the intent and purpose of this bill and the suggested revisions that were incorporated by the previous committee and are reflected in HD1. However, we believe that certain proposed language was inadvertently "dropped" from the HD 1 that was passed out by the previous Committee. The "dropped" language occurs at page 7 lines 9-10 of the current version of the bill. The words "except that the termination shall be within 120 days and" should be inserted after "contract" at the end of line 9 and before "without" at the beginning of line 10. Without this language, a property management company can avoid termination (as intended by this provision) by renewing the contract for 2-3 years prior to the annual meeting.

Steve Glanstein has provided suggested language in his testimony in support of this bill and HCCA agrees and incorporates by reference Mr. Glanstein's suggested revisions.

HCCA also supports the testimony of ARDA Hawaii with respect to the exemption for time share condominiums.

If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.

Jane Sugimura
President

PRESENTATION OF THE
REAL ESTATE COMMISSION

TO THE HOUSE COMMITTEE ON
JUDICIARY

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Thursday, April 2, 2015
2:00 p.m.

TESTIMONY ON SENATE BILL NO. 826, S.D. 1, H.D. 1, RELATING TO CONDOMINIUMS.

TO THE HONORABLE KARL RHOADS, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present comments on Senate Bill No. 826, S.D. 1, H.D. 1, Relating to Condominiums.

This bill proposes changes to the current condominium law that are consistent with and will reinforce the self-enforcing nature of the condominium law. For example, Senate Bill No. 826, S.D. 1, H.D. 1, encourages condominium associations to adopt good accounting practices by requiring associations to adopt a tax resolution; allows owners a voice in the termination of contracts for condominium managing agents; and emphasizes owner participation and the concept of majority rule by requiring that association meetings be held at a site convenient and readily accessible to the majority of the unit owners. Moreover, under prescribed conditions, Senate Bill No. 826, S.D. 1, H.D. 1, allows for a reduced quorum at an annual meeting so that at a minimum, the important business of the association, such as adopting the tax resolution or electing a condominium board of directors, may continue.

The Commission is in agreement with the intent of Senate Bill No. 826, S.D. 1, H.D. 1, to give more condominium owners a role in the self-governance of their association and a voice in the governing of the day-to-day affairs affecting their association.

Finally, the Commission directs the Committee's attention to paragraph (c) on page 4, lines 4 – 8. The language should make clear that at the third adjourned annual meeting, the reduced quorum applies only where quorum has not been met. It should read as follows:

- (c) At the third attempt to obtain quorum, the meeting shall be held within ninety days of the first meeting, and, if quorum is not achieved at this third meeting, this meeting shall have a quorum requirement of one-half of the requirement as stated in the bylaws of the association.

Thank you for the opportunity to submit comments on Senate Bill No. 826, S.D. 1, H.D. 1.

April 2, 2015

TO: COMMITTEE ON JUDICIARY
Representative Karl Rhoads, Chair
Representative Joy San Buenaventura, Vice Chair

FR: Henry Perez, President (via Chrystn Eads)
American Resort Development Association

RE: S.B. 826 SD1, HD1 Relating to Condominiums
Position: Support

Dear Chair Rhoads and Vice Chair San Buenaventura and members,

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, supports House Draft 1 which includes an exemption for time share projects, an amendment made by the House Consumer Protection Committee. We did not support Senate Draft 1 of SB826 which did not include this exemption, even though it was part of the original bill. As such, we continue to support this bill so long as the exemption language in Section 3, amendments to Haw. Rev. Stat. § 514B-107(j), remains.

Thank you for the opportunity to submit testimony.

c/o Alston Hunt Floyd & Ing * 1001 Bishop Street, 18th Floor * Honolulu, Hawai`i 96813

April 7, 2015

TO: COMMITTEE ON JUDICIARY
Representative Karl Rhoads, Chair
Representative Joy San Buenaventura, Vice Chair

FR: Blake Oshiro, Executive Director, ARDA-Hawaii

RE: S.B. 826 SD1, HD1 Relating to Condominiums
Position: Support with Amendments

Dear Chair Rhoads and Vice Chair San Buenaventura and members,

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, supports House Draft 1 which includes an exemption for time share projects, an amendment made by the House Consumer Protection Committee. We did not support Senate Draft 1 of SB826 which did not include this exemption, even though it was part of the original bill. As such, we continue to support this bill so long as the exemption language in Section 3, amendments to Haw. Rev. Stat. § 514B-107(j), remains.

However, in addition, we request that the bill be amended to add definitions as a new subsection (k):

> (k) For purposes of subsection (j):
> (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 and other units not designed for dwelling or lodging purposes, 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.

Thank you for the opportunity to submit testimony.

MCCORRISTON MILLER MUKAI MACKINNON LLP
ATTORNEYS AT LAW

CHARLES E. PEAR, JR.

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

April 6, 2015

Honorable Rep. Karl Rhoads, Chair
Honorable Rep. Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary
Twenty-Eighth Legislature
Regular Session, 2015

Re: S.B. 826, S.D. 1, H.D. 1
Hearing on April 7, 2015, 2:05 p.m.
Conference Room 325

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

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

1. Current Status.

ARDA Hawaii supports the bill provided that time sharing projects are exempt from it.

House Draft 1 amended the earlier drafts by adding an exemption for time share condominiums that was included in a similar bill last year. However, a portion of the exemption language was omitted and ARDA requests that it be restored.

We have discussed this omission with one of the other stakeholders, who indicated that he has no objection to including the additional language. He forwarded the corrections to the other stakeholders although we have not yet heard from any of them.

We would be most grateful if the rest of the exemption language was included in the bill.

2. Basis for ARDA Concerns.

The bill 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 and Hilton, or are branded by major hospitality brands such as Westin, Marriott and Hyatt.

In addition, most of these time share plans provide access to 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 properties in their vacation club. For example, an owner in Disney's Aulani resort may choose instead to stay in the Animal Kingdom time share property at Walt Disney World.

If the managing agent is discharged, however, then the project will no longer be branded as a Disney, Westin, Hilton, Hyatt 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 small group takes control of the board, they could vote to terminate the management agreement, with the result that 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 lightly nor without the approval of the owners.

For the foregoing reasons, ARDA requests that time share projects be exempted from the bill. We fully understand that circumstance may differ for a condominium used as a principal residence by the owners who live in the project. But we request that the complete language of the time share exemption be restored in the bill.

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

Charles E. Pear, Jr.

CEP:kn

TESTIMONY
SB826
Support with Amendments

I am the Hawaii Regional Vice President of Associa that manages more than 600 associations in Hawaii.

From its initial introduction SB826 has morphed to include new items that need to be addressed to correct unintended consequences.

First, the original language in the Bill appropriately addressed the exclusion for time share organizations. The following original definition language needs to be reinserted in the current draft:

> "For purposes of this subsection (j): (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 and other units not designed for dwelling or lodging purposes, 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."

Second, 514B-107(h) the following original language needs to be inserted otherwise the contract termination date may be extended for an unreasonable period.

> "……the board shall terminate a managing agent's contract in accordance with the provisions of the contract, except that the termination shall be within 120 days and without incurring any liability or penalty to the association of unit owners."

Finally, the Bill proposes that the association's budget for units greater than 49 units be prepared on the accrual basis if accounting. It makes no sense for the budget to be prepared on the accrual basis of accounting and the actual financial statement is prepared on another basis such as cash accounting. The actual and budget should match.

The original language in the Bill required the financial statement not the budget is prepared on the accrual basis of accounting using generally accepted accounting principles. Some management companies prepare their association clients' financial statements using cash basis accounting which is defined by the American Institute of Certified Public Accountants as less than generally accepted accounting principles.

If the legislature desires that owners, buyers, lenders, and vendors know the true financial condition of an association, then financial statement need to be prepared using the accrual basis of accounting. There would need to be a period of time for some management companies to implement the requirement; for example two years.

My reasoning for requiring accrual accounting is very simple. Owners deserve accurate financial information. For example, a cash basis financial statement can show income of $100,000 and expense of $98,000 leaving a false impression of the financial condition of their association or a small excess income ($2,000. If in the management company's drawer are $20,000 of unpaid bills and $50,000 of unfunded reserve contributions as required by law; then the true financial condition is a loss of -$68,000 and probable future assessment as the reserves are not being funded. Cash basis accounting simply does not reflect unpaid liabilities. This example is one of many actual situations I have seen in the industry.

In the end, if the legislature wants owners to have full transparency of the association's financial condition then accrual basis accounting using generally accept accounting principle is mandatory. Because it is not convenient for a management company should be no excuse. Volunteer board should have for their use the best and most accurate financial information in their decision making.

This section 5(a)(2) should read

> "……provided that associations with fifty or more units shall prepare a financial statement and budget on an accrual basis in accordance with generally accepted accounting principles."

Richard Emery
Vice President

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Oppose	No

Comments: Please accept this as testimony in strong opposition. As a condo owner and board member, I find the legislature's overreaching to be intrusive. You would not like it if the people could take over your duties and unilaterally change governing documents at will. My association uses a modified accrual basis, though I would prefer it be CASH instead of accrual. Let each association make its decision, not the legislature. Do not impose your will on those who own property and pay taxes on fees on their homes and investments. There needs to be a realistic window if an association votes to remove its managing agent. I do not see it in this bill. It takes time to send out proposals, vet them, interview prospective agents, etc. It cannot be done overnight. Additionally, the deision to retian and remove should be made by the entire membership, not a small board. It is at annual meetings that complaints and commendations arise, often complaints and commendations that board members are not aware of. Please kill this bill ow. lynne matusow,

HAWAII CHAPTER
community
ASSOCIATIONS INSTITUTE

April 6, 2015

VIA WEB TRANSMITTAL

Hearing Date: Tuesday, April 7, 2015
Time: 2:05 p.m.
Place: Conference Room 325

Committee on Judiciary
House of Representatives, the 28th Legislature
Regular Session of 2015

Re: Community Associations Institute's Testimony on SB 826

Dear Chair Rhoads, Vice Chair Buenaventura and Committee members:

I am the Chair of the Community Associations Legislative Action Committee ("CAI"). CAI supports SB826 in general, but respectfully offers amendments for the Committee's consideration to address several issues in the existing version of the bill.

CAI shares the concerns pointed out by other testifiers that the proposed subsection (h) to be added to HRS § 514B-107 may cause issues to Associations that have to deal with evergreen clauses in property management contracts that would automatically renew for a certain period prior to any annual meeting. CAI proposes to insert a time limit of 120 days to protect the condominium associations in the event of a majority of unit owners take the affirmative action to require a change of management companies:

"(h) Notwithstanding any provision in the declaration, bylaws, or any documents to the contrary, at an association meeting of unit owners a managing agent's contract may be terminated by a vote of a majority of the unit owners of an association. Pursuant to such vote taken by a majority of the unit owners, the board

shall terminate a managing agent's contract in accordance with the provisions of the contract***, except that the termination shall be within 120 days*** without incurring any liability and penalty to the association of unit owners. For purposes of this section, "majority of the unit owners" shall have the same meaning as in section 514B-3."

CAI highly recommends the Committee delete the proposed amendment to HRS § 514B-148 requiring Associations with 50 or more units prepare a budget on an accrual basis. CAI takes the position that the Associations should have the discretion to decide which type of accounting is more suitable for their projects and members, and the fact that the methods used for budget and account must be consistent. One cannot have an accrual basis budget and compare it to cash basis accounting. Both budget and accounting must use the same method. The unit owners and board directors, most of whom do not specialize in accounting or finance, would not want to give up their rights to manage their own finances by being forced to use a method of accounting they would not understand without expert help.

CAI agrees with timeshare group's proposed amendment to this bill by adding definitions to the time share exemption.

CAI represents many thousands of condominium owners and cooperative housing corporation members in Hawaii, and respectfully submits its position on SB 826 for your review and consideration.

Sincerely yours,

Na Lan

Na Lan, Chair of CAI LAC Hawaii

1288 Kapiolani Blvd, Apt 1905
Honolulu, Hawaii 96814
April 1, 2015

TESTIMONY IN OPPOSITION TO
SB 826, SD1, RELATING TO CONDOMINIUMS

COMMITTEE ON JUDICIARY
Thursday, April 2, 2:00 p.m., Conference Room 325

Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair
Members of the Committee on Judiciary

Aloha,

My name is Marilyn Khan and I am a unit owner at the Moana Pacific, a 720 unit condominium complex and I wish to testify in OPPOSITION to SB 826, SD1, unless it is further amended.

SB 826, S.D. 1 proposes to amend chapter 514B of the Hawaii Revised Statues for the purpose of enhancing effectiveness and efficiency of self-governance in condominium living. The provisions concerning the quorum for association meetings will do that, however, the following provisions of the bill will **not** make it effective or efficient for Moana Pacific, or for that matter, any other large condominium in Hawai'i.

a. Regarding section 1, S.B. 826, S.D. 1, Section 1 (5) would authorize the board of a condominium association to terminate a managing agent's contract upon a majority vote of the association of unit owners. This provision is not effective or efficient and **does not favor a Homeowners Association**, **but rather favors a managing agent since many of us know how difficult it is to even have quorum to conduct the annual Association Homeowners meeting.** Further, it is the Board of Directors who work daily with the managing agent and who are in the best position to render judgment as to the effectiveness and efficiency of the managing agent. Imposing a requirement that termination requires a majority vote of association of unit owners will delay this action and will be difficult to achieve, especially since for a large condominium such as ours, many of our owners live off island.

b. Regarding section 3 , S.B. 826, S.D. 1, Section 514B-107 (g) and (h) seem ambiguous in that (g) gives authority to employ, renew, and terminate a managing agent's contract to the Board of Directors; and (h) gives that same authority to unit owners of an association. Intent based on Section 1(5) may have been that the

Board of Directors can only do this when implementing the majority vote of association unit owners.

RECOMMENDATION: Amend section 1, S.B. 826, S.D.1, Section 1(5) to authorize either the board OR the homeowners association on majority vote to terminate a managing agent. Amend section 3, S.B. 826, S..D. 1, Sections 514B-107 (g) and (h) to add an "or" condition between these sections. Giving authority to either the Board or the homeowners to terminate a managing agent would be more efficient and effective. It further gives homeowners an avenue to terminate a managing agent if the Board of Directors do not do so.

c. Regarding SB826, S.C.1, Section 4 (e), recommend deletion of the proposed addition "and at a site convenient and readily accessible to the majority of the unit owners." I agree with the testimony of the Hawaii Chapter, Community Associations Institute that this provision appears to be vague and subject to debate and thus, could lead to disputes over the site of the annual meeting. Accordingly, this provision does not satisfy the intent of SB826 that is to enhance effectiveness and efficiency of self-governance.

Interestingly, not a single homeowner gave **individual** testimony on this bill. Recommend at the next legislative session, there be a bill requiring managing agents to inform Homeowner Associations, or at least their Board of Directors, about bills affecting condominium management.

Mahalo for your consideration of my comments and recommendations. Unless revisions are made to the cited problematic provisions, I stand in opposition to this bill. The only good provision in it that would achieve the intention of S.B. 826 is that concerning the quorum for association meetings.

Respectively,

MARILYN L. KHAN (by e-mail)
Homeowner, Moana Pacific Condominium

.

The larger question to address is accounting for the associations rather than accrual accounting for budget purposes. One cannot have an accrual basis budget and compare it to cash basis accounting. Both budget and accounting must use the same method.

There is no dispute that the American Institute of Certified Public Accountants and their generally accepted accounting principals are the authority and rules to which accountants and financial statement users look to when accounting is the issue. If you asked any certified public accountant what method of accounting is best, he will say accrual accounting. He will say this with no reservations because his education, experience and certification make him an expert in accounting, and especially, in accrual accounting according to GAAP.

Cash accounting is a widely used basis of accounting that is recognized by the Internal Revenue Service and by many practitioners of accounting. Many businesses and organizations use this method and have done so for many, many years. It provides many associations with all of the information they need to carry out their association's business in a responsible and accountable manner.

Hawaiiana has been in the business of property management for over 40 years and currently, has over 400 client associations. We have provided cash basis and modified accrual basis accounting but not accrual accounting because our clients do not want accrual accounting. Very few clients want modified accrual accounting. Why? Our clients do not understand accrual. The vast majority of our clients do have not a CPA license let alone an accounting background. But they take their responsibilities relative to the financial health of their associations very seriously as do we. They personally want to understand their financial statements, the accounting and what happened to their money. Our clients understand cash accounting and they confidently manage their operations and funds with our assistance. Our clients would not want to give up their right to manage their own finances by being forced use a method of accounting they would not understand without expert help. To require accrual accounting for all associations would not bring more clarity and accountability but rather less clarity and more costs.

In many associations, accrual accounting would have little or no benefit because there are very few events that would be accrued. Would the law require accrual accounting in these cases? This requirement would put a large burden in terms of accounting costs on these associations. For example, the revised law would force many associations to incur the higher expense of an accrual-trained accountant and the additional cost of time which is inherent in accrual accounting even though there would be no substantial need for accrual.

Conversely then, there would be some associations that may benefit from accrual accounting. They may include associations which have a large taxable revenue source generated from depreciable assets. How many of these associations are there? Very,

very few associations from our experience. Associations are not set up to generate for-profit revenues.

We believe the association themselves should have a choice as to what kind of accounting is best for their particular situation. The Boards have a fiduciary duty to their membership and have access to many experts who can help make the best decision on this matter. A law taking this decision out their hands would not serve the best interests for the majority of our client associations.

I am a recently retired Executive Vice President, Chief Financial Officer of Hawaii First Inc. I have over 30-years professional accounting experiences ranging from Fortune 500 for profits to non-profit organizations, such as managing AOAO entities for the past 17 years. My experiences in the condo business lead me to SUPPORT this bill. That is because it is about time the industry needs to have the standardization for the management companies to prepare uniformed, consistent and transparent financial data for the homeowners.

Currently, every management company has its own interpretation of the State law and prepares AOAO financials based on its internal bookkeepers understanding of the law. Critical financial status such as Accounts Receivable balance, Accounts Payable, Accrued Liabilities, Owners Equity, normally presented in the Balance Sheet, are no where to be found, not mentioning if associations have loans from the financial institutions to make ends meet or to cover the shortfall of under-funded reserve funds. There are also missing monthly reserve contributions that are required to deposit in the separate reserve fund. Absences of these critical financial data not only mislead the homeowners, but potentially defraud the prospective buyers or investors. The classic example is my sister who bought a condo a few years back; four months after she moved in, she was assessed with $23,000 special assessment for her unit from the association. The information was neither disclosed in the RR105C, nor appeared in the financial statements she received from the seller. If she had the accurate accrued financial statements, then she could have analyzed the financial condition of the association position and perhaps re-negotiated the selling price.

Accrual basis accounting is prepared on General Accepted Accounting Principles (GAAP) and is endorsed by CAI and has been widely implemented in California HOA for many years. AOAO are composed of homeowners, like any public-traded companies which are composed of shareholders that the companies are required to prepare the financial statements on accrual basis for accuracy and comparativeness in its industry. Even the federal housing program HUD also requires its project financials prepared on the accrual basis. For the sake of consumer protection and fraud prevention, SB#826 that required any condo association with 50 units or more to prepare accrual basis accounting will be beneficial in mandating the management companies to standardize the financial preparation to their clients, ultimately for the benefit of consumer protection and fraud prevention.

Steve Glanstein
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April 6, 2015

Honorable Rep. Karl Rhoads, Chair
House Committee on Judiciary
Conference Room 325
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415 South Beretania Street
Honolulu, HI 96813

Honorable Rep. Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, HI 96813

RE: SUPPLEMENTAL COMMENTS REGARDING SB826 SD1 HD1; Hearing Date: April 7, 2015 at 2:05 p.m. in House conference room 325; sent via Internet

Aloha Chair Rhoads, Vice-Chair San Buenaventura, and Committee members,

Thank you for the opportunity to provide additional testimony on this bill. This will supplement my previous testimony to the Committee.

The timesharing exemption in subsection (j) should include a definition that was omitted from the House draft. I suggest the Committee add the following on Page 8 line 3:

"For purposes of this subsection (j):

(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 and other units not designed for dwelling or lodging purposes, 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."

Thank you for the opportunity to present this supplemental testimony.

Sincerely,

Steve Glanstein

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April 2, 2015

Honorable Rep. Karl Rhoads, Chair
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Honolulu, HI 96813

Honorable Rep. Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony with COMMENTS REGARDING SB826 SD1 HD1; Hearing Date: April 7, 2015 at 2:05 p.m. in House conference room 325; sent via Internet

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

Thank you for the opportunity to provide testimony on this bill.

I am an experienced Professional Registered Parliamentarian who has worked with condominium and community associations every year since I began my practice in 1983 (over 1,400 meetings in over 30 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that developed Chapter 514B.

This testimony is presented with SUGGESTED CHANGES TO CLARIFY SB826 SD1 HD1 ("Bill"). I believe that the current bill needs to be clarified such that it continues to represent the needs of the entire condominium community rather than a few property management companies, associations, or individuals.

A. Clarify Contract Termination

The current wording in the Bill, page 7, lines 3-12 is,

> "(h) Notwithstanding any provision in the declaration, bylaws, or any documents to the contrary, at an association meeting of unit owners a managing agent's contract may be terminated by a vote of a majority of the unit owners of an association. Pursuant to such vote taken by a majority of the unit owners, the board shall terminate a managing agent's contract in accordance with the provisions of the contract without incurring any liability and penalty to the association of unit owners. For purposes of this section, 'majority of the unit owners' shall have the same meaning as in section 514B-3."

This wording leaves a loophole related to evergreen clauses.[1]

In the past, condominiums have had issues with **property management contracts that would automatically renew** for a 1 to 3 year period **prior** to any annual meeting. This provided management companies with a "breather" since the composition of the officers and the hiring body, i.e. the board of directors, could change as a result of the annual meeting and subsequent election of officers.

I propose inserting a time limit of 120 days to protect the condominium association in the event a majority of unit owners take the affirmative action to require a change of management companies.

I propose the following wording in the Bill, page 7, lines 3-12,

> "(h) Notwithstanding any provision in the declaration, bylaws, or any documents to the contrary, at an association meeting of unit owners a managing agent's contract may be terminated by a vote of a majority of the unit owners of an association. Pursuant to such vote taken by a majority of the unit owners, the board shall terminate a managing agent's contract, in accordance with the provisions of the contract**, except that the termination shall be within 120 days** without incurring any liability and penalty to the association of unit owners. For purposes of this section, 'majority of the unit owners' shall have the same meaning as in section 514B-3."
>
> *[Proposed insertion is underlined and in bold type.]*

B. Housekeeping Items

1. The Bill, Section 1, page 1, lines 15-17 state:

> "(1) Require that a duly noticed annual meeting be held at a location convenient and easily accessible to a majority of condominium unit owners;"

This is no longer applicable since the relating wording of the Bill (Section 4) has been changed. I suggest that the committee clarify these lines to reflect the revised wording of the current Bill:

> "(1) Require that a duly noticed annual meeting be held at a location convenient and easily accessible;"

2. I also propose that the committee consider changing the effective date in the Bill, Section 10, page 11, line 3 from, "July 1, 2112" to, "approval."

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[1] An evergreen clause is a statement within a contract that says something to the effect of, "this agreement shall automatically renew for another three (3) year term, unless either party provides notice to the other of its intent to terminate this agreement not less than thirty (30) days before the end of the then current term."

I look forward to any discussions of this proposal. I may be contacted via phone: 423-6766 or by e-mail: StevegHI@Gmail.com. Thank you for the opportunity to present this testimony.

Sincerely,

Steve Glanstein

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Professional Registered Parliamentarian

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Submitted By	Organization	Testifier Position	Present at Hearing
Vincent OBrien	Individual	Oppose	No

Comments: As a 25 year owner and prior and current member of several Waikoloa Beach Resort AOAO Boards of Directors (Vista Waikoloa, Colony Villas and Kolea)I feel strongly that ONLY Boards should have the right to select and terminate Managing Agents. Directors contribute hundreds of hours annually, without compensation, on AOAO issues. Home owners who do not, or have not, served on AOAO Boards, have no experience or knowledge base upon which to decide whether Managing Agents should be terminated. That is, and should be, a Board decision made by dedicated knowledgeable owners who serve on AOAO Boards. The ability of owners who are not Board members to terminate Managing Agents over any single incident or personal gripe or grudge could plunge the AOAO into a crisis situation. If owners want that power, let them run for their local Board and be prepared to dedicate themselves to long hours of service without compensation. Then they will have gained enough experience to intelligently decide whether a Managing Agent should be terminated.

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Takumi	Individual	Support	No

Comments: I support the bill with the proposed amendments submitted by Community Associations Institute LAC. I think it's important to let the customer (Association) decide what kind of accounting system they use.