

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON  
COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2015

Monday, March 16, 2015  
2:00 p.m.

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

TO THE HONORABLE ANGUS L.K. MCKELVEY, 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 testimony on Senate Bill No. 826, S.D. 1, Relating to Condominiums.

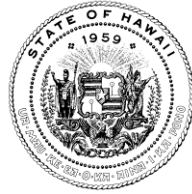
This bill proposes changes to the current condominium law that are consistent with and will reinforce the self-enforcing nature of the condominium law. For example, Senate Bill No. 826, S.D. 1 encourages condominium associations to adopt good accounting practices by requiring associations to adopt a 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 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.

Testimony on Senate Bill No. 826, S.D. 1  
Monday, March 16, 2015  
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The Commission is in agreement with the intent of Senate Bill No. 826, S.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.

Lastly, the Commission respectfully requests the Committee to consider amending the language concerning the termination of a managing agent's contract when unit owners find the contract to be "unconscionable" at the time the contract was entered into (page 6, line 20, to page 7, line 14). The inclusion of this language regarding the unconscionability of contracts may create unnecessary uncertainty in the application of this part of the measure.

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



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
LT. GOVERNOR

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

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH STATE LEGISLATURE  
REGULAR SESSION, 2015

MONDAY, MARCH 16, 2015  
2:00 P.M.

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

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND TO THE HONORABLE JUSTIN H. WOODSON, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 826 S.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.

Senate Bill No. 826 S.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 at a location convenient and accessible to a majority of condominium unit owners; 2) allowing for a reduced annual meeting quorum requirement if quorum is not met at two prior adjourned annual meetings; 3) 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; 4) limiting the time between the first adjourned annual meeting and the reduced-quorum annual meeting to no more than ninety days; 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; 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 and responses.

This Committee heard and deferred a similar bill, House Bill No. 275.

RICO appreciates the efforts of the Senate Committee on Commerce and Consumer Protection to develop the language in Senate Bill No. 826 S.D.1 in order 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 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.

Testimony on Senate Bill No. 826 S.D.1  
March 16, 2015  
Page 3

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



**P.O. Box 976  
Honolulu, Hawaii 96808**

March 14, 2015

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

Honorable Rep. Justin H. Woodson, Vice-Chairman  
House Consumer Protection and Commerce Committee  
Hawaii State Capitol, Room 304  
415 South Beretania Street  
Honolulu, HI 96813

**Re: Testimony with COMMENTS REGARDING SB826 SD1; Hearing Date:  
Monday, March 16, 2015 at 2:00PM in House conference room 325; sent via  
Internet**

Dear Chair McKelvey, Vice-Chair Woodson, and Committee members:

I am the vice-chair of the Community Association Institute's ("CAI") Legislative Action Committee. As you know, members of CAI consist of condominium and community association owners, lawyers that practice in this area, vendors that offer service to these association, and property managers.

We support the intent of SB826, SD1, i.e., (1) to give condominium associations the ability to hold annual meetings with a lower quorum in the event that the quorum of the membership required by the governing documents is not achieved when the annual meeting is first called – as this will allow for the tax rollover resolution to be adopted which is import to the Association's tax status, and the election of directors; and (2) to allow for the Board of Directors of the condominium association, that are charged with managing the affairs of the project to not only be a in position to hire and fire vendors, for example the trash collector or painting contractor, but to be in a position – regardless of the governing documents – to terminate the managing agent without the need for owner approval.

However, CAI offers the following clarifications that have been incorporated into SB826 SD1 as HD1, in a form that is attached hereto:

1. Page 3, lines 16 – 17: are to clarify that "member" is a defined term in HRS §514-107(a), and nothing more.

2. Page 3, lines 22 – 24, and page 4 lines 1 – 8: are to clarify the intent that if the quorum of the association is not achieved the first time, there will be a second attempt to achieve the required quorum, and if this fails, then on the third attempt there will be an annual meeting where the quorum requirement is reduced by half, but the second and third attempts must be within 90-days of the first attempted meeting.
3. Page 4, lines 15 – 16: are to clarify that “member” is a defined term in HRS §514-107(a), and nothing more.
4. Page 6, lines 14 – 24, and page 7, lines 1 – 13: these revisions seek to clarify that regardless of the restrictions on terminating a managing agent, the Board will have the power to terminate even if the restrictive language is contained in some other document other than the declaration and bylaws, and the definition of “unsociability” has been deleted as that term is vague and ambiguous.
5. Sub-paragraph (j) on page 7, lines 21 – 23, and page 8, lines 1 – 2: included at the request of the timeshare organizations and CAI supports this language.
6. Page 8, line 5: this has been modified to delete ambiguous language.
7. Page 8, lines 13 – 15: these clarifications are necessary as a majority of unit owners may live in another country, but they provide proxies so the annual meeting should be held in Hawaii, but at a location that is accessible and convenient. Having the location be accessible and convenient to a “majority of the unit owners” appears to be vague and subject to debate, and thus, could lead to disputes over the site of the annual meeting.
8. Page 10, line 11: this deletion is suggested in that the association’s response to an information request by an owner may be different in each case, so there must be flexibility for the association in providing a response to the owner.

Thank you for your time and consideration. CAI respectfully submits the attached HD1 to SB826 SD1.

Very truly yours,



Christian P. Porter

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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1           SECTION 1. The legislature finds that condominium  
2 ownership is enjoyed by a large number of people in Hawaii, all  
3 of whom are members of their condominium unit owners'  
4 associations. The legislature further finds that full  
5 participation by condominium unit owners in the self-governing  
6 condominium association process under existing law on matters  
7 such as holding annual meetings to conduct required business,  
8 having the authority to terminate managing agent contracts,  
9 transparency in association budget and accounting matters, and  
10 the efficient processing of requests for association records, is  
11 challenging.

12           Therefore, the purpose of this Act is to enhance the  
13 effectiveness and efficiency of self-governance in condominium  
14 living by amending chapter 514B, Hawaii Revised Statutes, to:



- 1           (1) Require that a duly noticed annual meeting be held at  
2           a location convenient and easily accessible to a  
3           majority of condominium unit owners;
- 4           (2) Allow for two subsequent duly noticed adjourned annual  
5           meetings if there is no quorum present at the initial  
6           annual meeting and a reduced quorum requirement if  
7           quorum is not met at the third duly noticed adjourned  
8           annual meeting;
- 9           (3) Limit association business at an annual meeting  
10          conducted with a reduced quorum to the adoption of a  
11          tax resolution and the election of a board of  
12          directors for positions that have expired and are  
13          expiring;
- 14          (4) Restrict the time between the originally-noticed  
15          adjourned annual meeting and the reduced-quorum  
16          adjourned annual meeting to no longer than ninety  
17          days;
- 18          (5) Authorize the board of a condominium association to  
19          terminate a managing agent's contract upon a majority  
20          vote of the association of unit owners;
- 21          (6) Require a condominium association with fifty or more  
22          units to prepare its budget on an accrual basis in  
23          accordance with generally accepted accounting  
24          principles; and

1           (7) Require the use of standardized forms prescribed or  
2           approved by the commission for the condominium unit  
3           owner's request for records and the association's  
4           response to the request for records.

5           SECTION 2. Chapter 514B, Hawaii Revised Statutes, is  
6           amended by adding a new section to subpart B of part VI to be  
7           appropriately designated and to read as follows:

8           "§514B- Association meetings; failure to obtain a  
9           quorum. (a) Any association shall hold an annual meeting to  
10           conduct business that shall include but not be limited to the  
11           following:

12           (1) Electing, where applicable, to file Internal Revenue  
13           Service Form 1120 or 1120-H as may be amended and  
14           adopting a tax resolution in accordance with any  
15           accompanying revenue ruling as may be amended; and

16           (2) Electing a member as defined in HRS §514B-107(a) ~~unit~~  
17           ~~owner~~ to the board of directors to fill any position  
18           that is expiring or that has expired.

19           (b) If an association is unable to obtain a quorum at any  
20           annual meeting, then the association shall adjourn the annual  
21           meeting and shall set another time for the adjourned annual  
22           meeting in an attempt to obtain quorum, and this meeting shall  
23           be held in sufficient time so that if the quorum is again not  
24           achieved, then the third attempt for the annual meeting, as

1 noted in sub-paragraph (c) below, is held within ninety days of  
2 the first annual meeting up to two more times within ninety days  
3 of the adjourned annual meeting.

4 (c) At the third attempt to obtain quorum, if a quorum is  
5 not achieved, that meeting shall be held within ninety days of  
6 the first meeting, and this adjourned annual meeting shall then  
7 have a quorum requirement of one-half of the requirement as  
8 stated in the bylaws of the association. Association business  
9 conducted at this meeting with a reduced quorum shall be limited  
10 to:

11 (1) Electing, where applicable, to file Internal Revenue  
12 Service Form 1120 or 1120-H as may be amended and  
13 adopting a tax resolution in accordance with any  
14 accompanying revenue ruling as may be amended; and

15 (2) Electing a member as defined in HRS §514B-107(a) unit  
16 owner to the board of directors to fill any position  
17 that is expiring or that has expired.

18 (d) An-Each adjourned annual meeting pursuant to this  
19 section shall be duly noticed in accordance with section 514B-  
20 121(c)."

21 SECTION 3. Section 514B-107, Hawaii Revised Statutes, is  
22 amended to read as follows:

23 **"§514B-107 Board; limitations.** (a) Members of the board  
24 shall be unit owners or co-owners, vendees under an agreement of

1 sale, a trustee of a trust which owns a unit, or an officer,  
2 partner, member, or other person authorized to act on behalf of  
3 any other legal entity which owns a unit. There shall not be  
4 more than one representative on the board from any one unit.

5 (b) No resident manager or employee of a condominium shall  
6 serve on its board.

7 (c) An owner shall not act as an officer of an association  
8 and an employee of the managing agent retained by the  
9 association. Any owner who is a board member of an association  
10 and an employee of the managing agent retained by the  
11 association shall not participate in any discussion regarding a  
12 management contract at a board meeting and shall be excluded  
13 from any executive session of the board where the management  
14 contract or the property manager will be discussed.

15 (d) Directors shall not expend association funds for their  
16 travel, directors' fees, and per diem, unless owners are  
17 informed and a majority approve of these expenses; provided  
18 that, with the approval of the board, directors may be  
19 reimbursed for actual expenditures incurred on behalf of the  
20 association. The board meeting minutes shall reflect in detail  
21 the items and amounts of the reimbursements.

22 (e) Associations at their own expense shall provide all  
23 board members with a current copy of the association's

1 declaration, bylaws, house rules, and, annually, a copy of this  
2 chapter with amendments.

3 (f) The directors may expend association funds, which  
4 shall not be deemed to be compensation to the directors, to  
5 educate and train themselves in subject areas directly related  
6 to their duties and responsibilities as directors; provided that  
7 the approved annual operating budget shall include these  
8 expenses as separate line items. These expenses may include  
9 registration fees, books, videos, tapes, other educational  
10 materials, and economy travel expenses. Except for economy  
11 travel expenses within the State, all other travel expenses  
12 incurred under this subsection shall be subject to the  
13 requirements of subsection (d).

14 (g) Notwithstanding any provision in the declaration, ~~or~~  
15 bylaws, or any other documents to the contrary, the board of an  
16 association managed by a managing agent shall have the ~~exclusive~~  
17 authority to employ, renew, and terminate a managing agent's  
18 contract.

19 (h) Notwithstanding any provision in the declaration, ~~or~~  
20 bylaws, or any other documents to the contrary, at an  
21 association meeting of unit owners a managing agent's contract  
22 may be terminated by an affirmative ~~a~~-vote of a majority of the  
23 unit owners of an association. Pursuant to such vote, ~~taken by~~  
24 a majority of the unit owners, the board shall terminate a

1 managing agent's contract in accordance with the provisions of  
2 the contract, except that the termination shall be within 120  
3 days and without incurring any liability or penalty to the  
4 association of unit owners. Where any provision of the managing  
5 agent's contract relating to the termination of the contract is  
6 unconscionable to the unit owners at the time it was entered  
7 into, the board may terminate the managing agent's contract  
8 without incurring any liability and penalty to the association  
9 of unit owners. An example of a termination provision that is  
10 unconscionable includes but is not limited to a termination  
11 provision requiring the approval vote of eighty per cent of the  
12 unit owners. For purposes of this section, "majority of the  
13 unit owners" shall have the same meaning as in section 514B-3.

14 (i) Subsection (h) does not apply to an association with  
15 units that are one hundred per cent:

- 16 (1) Intended for commercial use; ~~and/or~~
- 17 (2) Designed and constructed for hotel ~~and/or~~ resort use  
18 that are located on any parcel of real property  
19 designated and governed by a county for hotel or  
20 resort use pursuant to section 46-4."

21 (j) A project in which a majority of the units have been  
22 submitted to one or more vacation plans, or in which one or more  
23 units have been submitted to a vacation plan established by the

1 | developer of the project or by an affiliate of the developer,  
2 | shall be exempt from subsections (g) and (h).

3 | SECTION 4. Section 514B-121, Hawaii Revised Statutes, is  
4 | amended by amending subsections (d) and (e) to read as follows:

5 | "(d) ~~{All} Except as provided by this chapter, all All~~  
6 | association meetings shall be conducted in accordance with the  
7 | most recent edition of Robert's Rules of Order Newly  
8 | Revised. If so provided in the declaration or bylaws, meetings  
9 | may be conducted by any means that allow participation by all  
10 | unit owners in any deliberation or discussion.

11 | (e) All association meetings shall be held at the address  
12 | of the condominium or elsewhere within the State as determined  
13 | by the board[+] and at a site on the island where the  
14 | association is located that is convenient and readily accessible  
15 | to the majority of the unit owners; provided that in the event  
16 | of a natural disaster, such as a hurricane, an association  
17 | meeting may be held outside the State."

18 | SECTION 5. Section 514B-148, Hawaii Revised Statutes, is  
19 | amended by amending subsection (a) to read as follows:

20 | "(a) The budget required under section 514B-144(a) shall  
21 | include at least the following:

22 | (1) The estimated revenues and operating expenses of the  
23 | association;

- 1 (2) Information as to whether the budget has been prepared  
2 on a cash or accrual basis; provided that associations  
3 with fifty or more units shall prepare a budget on an  
4 accrual basis in accordance with generally accepted  
5 accounting principles;
- 6 (3) The total replacement reserves of the association as  
7 of the date of the budget;
- 8 (4) The estimated replacement reserves the association  
9 will require to maintain the property based on a  
10 reserve study performed by the association;
- 11 (5) A general explanation of how the estimated replacement  
12 reserves are computed;
- 13 (6) The amount the association must collect for the fiscal  
14 year to fund the estimated replacement reserves; and
- 15 (7) Information as to whether the amount the association  
16 must collect for the fiscal year to fund the estimated  
17 replacement reserves was calculated using a per cent  
18 funded or cash flow plan. The method or plan shall  
19 not circumvent the estimated replacement reserves  
20 amount determined by the reserve study pursuant to  
21 paragraph (4)."

22 SECTION 6. Section 514B-154.5, Hawaii Revised Statutes, is  
23 amended by amending subsection (c) to read as follows:



1           "(c) Notwithstanding any provision in the declaration,  
2 bylaws, or house rules providing for another period of time, all  
3 documents, records, and information listed under subsection (a),  
4 whether maintained, kept, or required to be provided pursuant to  
5 this section or section 514B-152, 514B-153, or 514B-154, shall  
6 be provided no later than thirty days after receipt of a unit  
7 owner's or owner's authorized agent's written request, unless a  
8 lesser time is provided pursuant to this section or section  
9 514B-152, 514B-153, or 514B-154, and except as provided in  
10 subsection (a)(14). A unit owner's or owner's authorized  
11 agent's written request ~~and any response to the written request~~  
12 shall be made on forms prescribed, or approved, by the  
13 commission."

14           SECTION 7. This Act does not affect rights and duties that  
15 matured, penalties that were incurred, and proceedings that were  
16 begun before its effective date.

17           SECTION 8. If any provision of this Act, or the  
18 application thereof to any person or circumstance, is held  
19 invalid, the invalidity does not affect other provisions or  
20 applications of the Act that can be given effect without the  
21 invalid provision or application, and to this end the provisions  
22 of this Act are severable.

23           SECTION 9. Statutory material to be repealed is bracketed  
24 and stricken. New statutory material is underscored.

1 SECTION 10. This Act shall take effect on July 1, 2050.

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**Report Title:**

Condominiums; Owners Associations; Meetings; Managing Agent;  
Termination of Contract; Records; Accessibility

**Description:**

Requires an association of unit owners to adopt a tax resolution and to fill positions on its board of directors for expired or expiring board positions during the association's annual meeting. Allows for rescheduling and reduced quorum requirements if annual meetings cannot be held to adopt a tax resolution or elect a board of directors. Authorizes the termination of a managing agent's service contract by the association in certain circumstances. Establishes requirements for the location of association meetings, the accounting practices of associations, and the request of records by association members. Effective 07/01/2050. (SD1)

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



March 16, 2015

TO: COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Representative Angus L.K. McKelvey, Chair  
Representative Justin H. Woodson, Vice Chair

FR: Henry Perez, President  
American Resort Development Association

RE: S.B. 826 SD1 Relating to Condominiums  
**Position: Not Support; Requested Amendments**

Dear Chair McKelvey and Vice Chair Woodson and members,

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, does not support Senate Draft 1 of SB826 due to changes made between the original bill and the SD1.

As initially introduced in SB826, the bill provided an exemption for time shares. However, the SD1 version, along with other substantive amendments, carved out that time share exemption.

As such, we would respectfully request that the Committee consider re-inserting the exemption language by adding a new section (j) to read as follows:

(j) Subsections (g) and (h) shall not apply to a project that is subject to 514E or which a majority of the units have been submitted to one or more vacation plans, or in which one or more units have been submitted to a vacation plan established by the developer of the project or by an affiliate of the developers.

Thank you for the opportunity to submit testimony.



March 13, 2015

T: 808.521.9500  
F: 808.541.9050

Representative Angus L.K. McKelvey, Chair  
Representative Justin H. Woodson, Vice Chair  
Members of the House Committee on Consumer Protection  
And Commerce  
Twenty-Eighth Legislature  
Regular Session of 2015

**RE: SB 826, SD 1 Relating to Condominiums**  
**Hearing date: Monday, March 16, 2015**  
**2:00 pm, Conf. Rm. 325**

Aloha Chair, Vice-Chair and Members of the Committee,

Thank you for allowing me to provide comments on SB 826, SD 1 on behalf of Marriott Vacations Worldwide Corporation ("MVWC").

The purpose of this bill is to enhance the ability of condominium unit owners to engage in self-governance in condominium living by, *inter alia*, reducing the quorum requirements to elect board members or to adopt a tax resolution. However, the intent of the bill was to exempt any condominium project in which a majority of the units were submitted to a vacation plan or one or more units have been submitted to a vacation plan by the developer of the project.

Despite the clear intent that units subject to a vacation plan are exempt from the provisions of SB 826, SD 1, the revised language in Section 3 of SD 1 confuses rather than clarifies such intent. Accordingly, we request that SB 826, SD 1 be amended by revising Section 3 regarding 514B-107(i) as follows:

- (i) Subsection (g) and (h) do not apply to:
  - (1) An association with units that are one hundred per cent intended for commercial use and designed and constructed for hotel or resort use that are located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to section 46-4; or
  - (2) A project that is subject to 514E or which a majority of the units have been submitted to one or more vacation plans, or in which one or more units have been submitted to a vacation plan established by the developer of the project or by an affiliate of the developers.

or by adding a new section (j) as follows:

- (j) Subsection (g) and (h) do not apply to a project that is subject to 514E or which a majority of the units have been submitted to one or more vacation plans, or in which one or more



IMANAKA ASATO

A LIMITED LIABILITY LAW COMPANY

units have been submitted to a vacation plan established by the developer of the project or by an affiliate of the developers.

These changes will allow the Legislature to accomplish the purpose of SB 826, SD1, without needlessly affecting timeshare unit owners.

For these reasons, I respectfully request that the committee consider MVWC's comments on SB 826, SD 1. Mahalo for your consideration.

Sincerely,

IMANAKA ASATO LLC

Michael L. Iosua

MLI:th

From: mailinglist@capitol.hawaii.gov  
Sent: Sunday, March 15, 2015 5:35 AM  
To: CPCtestimony  
Cc: richard@hawaiifirst.com  
Subject: Submitted testimony for SB826 on Mar 16, 2015 14:00PM

**SB826**

Submitted on: 3/15/2015

Testimony for CPC on Mar 16, 2015 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Associa	Support	No

Comments: I support with the amendments submitted by CAI.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov  
Sent: Saturday, March 14, 2015 11:38 AM  
To: CPCtestimony  
Cc: mjgolo@email.phoenix.edu  
Subject: \*Submitted testimony for SB826 on Mar 16, 2015 14:00PM\*

**SB826**

Submitted on: 3/14/2015

Testimony for CPC on Mar 16, 2015 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Golojuch	Palehua Townhouse Association	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov  
Sent: Friday, March 13, 2015 3:31 PM  
To: CPCtestimony  
Cc: kalelekai002@hawaii.rr.com  
Subject: Submitted testimony for SB826 on Mar 16, 2015 14:00PM

**SB826**

Submitted on: 3/13/2015

Testimony for CPC on Mar 16, 2015 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alan Takumi	Individual	Comments Only	No

Comments: It's not clear to me what the time requirement is to set the subsequent annual meetings are. The addition states "and shall set another time for the adjourned annual meeting in an attempt to obtain quorum up to two more times within ninety days of the adjourned annual meeting" Does this mean there needs to be two attempts made within the ninety day window or is it ninety days per attempt?

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From: mailinglist@capitol.hawaii.gov  
Sent: Saturday, March 14, 2015 9:28 PM  
To: CPCtestimony  
Cc: nalan@myhawaiiilaw.com  
Subject: Submitted testimony for SB826 on Mar 16, 2015 14:00PM

**SB826**

Submitted on: 3/14/2015

Testimony for CPC on Mar 16, 2015 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Na Lan	Individual	Support	No

Comments: Support the amended version proposed by CAI LAC

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Steve Glanstein  
Professional Registered Parliamentarian  
P. O. Box 29213  
Honolulu, HI 96820-1613

March 13, 2015

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

Honorable Rep. Justin H. Woodson, Vice-Chairman  
House Consumer Protection and Commerce Committee  
Hawaii State Capitol, Room 304  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Testimony with COMMENTS REGARDING SB826 SD1; Hearing Date: Monday, March 16, 2015 at 2:00PM in House conference room 325; sent via Internet**

Aloha Chair McKelvey, Vice-Chair Woodson, 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. I believe that the current bill needs to be clarified such that it represents the needs of the entire condominium community rather than a few property management companies, associations, or individuals.

The following is a summary of the proposed significant changes:

1. Clarified eligibility for election to the board (page 3, lines 16-17; page 4, lines 15-16).
2. Clarified use of "adjourned annual meeting" and "annual meeting" (pages 3-4).
3. Clarified that the stricter notice requirements are for the adjourned annual meetings and they apply only to those adjourned annual meetings (pages 3-4).
4. Clarified that the authority to employ, renew, and terminate a managing agent's contract is the exclusive responsibility of the board, regardless of the association documents (page 6, lines 14-20).

5. Clarified that an association vote to order a property management contract termination is an “affirmative vote of a majority of the unit owners.” Removed redundant wording (page 6, lines 22-24).
6. Provided a 120 day window for property management contract termination if ordered by the owners (page 7, lines 2-4). The termination is to be without any liability or penalty to the association of unit owners.
7. Inserted wording to provide an exception due to the different requirements for vacation plans (page 7, lines 21-23 through page 8 lines 1-2).
8. Removed the exception to Chapter 514B regarding Robert's Rules since it has always been subservient to state law. [Current language would have elevated Robert's Rules' authority above other applicable HRS Chapters such as 414D] (page 8, line 5).
9. Clarified wording to clarify that association meetings must be held at an unqualified convenient and readily accessible site on the island where the association is located (page 8, lines 11-15).
10. Removed wording requiring that the association's response to a document request must follow a prescribed form by the Real Estate Commission since association's written responses to these requests are case specific (page 10, lines 10-13).

I ask that the committee make these changes so that we can have a clean bill that will help Hawaii's 1,733 condominium associations or about 161,373 homes.<sup>1</sup>

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

Sincerely,

Steve Glanstein  
Professional Registered Parliamentarian

SG:tbs/Attachment  
D:\\$P\Legislative2015\SB826 AM&Q\Testimony1.wpd

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<sup>1</sup> Reference is to: <http://cca.hawaii.gov/reb/files/2013/08/AOUOContact1501.pdf> dated January 5, 2015.

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# A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1           SECTION 1. The legislature finds that condominium  
2 ownership is enjoyed by a large number of people in Hawaii, all  
3 of whom are members of their condominium unit owners'  
4 associations. The legislature further finds that full  
5 participation by condominium unit owners in the self-governing  
6 condominium association process under existing law on matters  
7 such as holding annual meetings to conduct required business,  
8 having the authority to terminate managing agent contracts,  
9 transparency in association budget and accounting matters, and  
10 the efficient processing of requests for association records, is  
11 challenging.

12           Therefore, the purpose of this Act is to enhance the  
13 effectiveness and efficiency of self-governance in condominium  
14 living by amending chapter 514B, Hawaii Revised Statutes, to:

- 1           (1) Require that a duly noticed annual meeting be held at  
2           a location convenient and easily accessible to a  
3           majority of condominium unit owners;
- 4           (2) Allow for two subsequent duly noticed adjourned annual  
5           meetings if there is no quorum present at the initial  
6           annual meeting and a reduced quorum requirement if  
7           quorum is not met at the third duly noticed adjourned  
8           annual meeting;
- 9           (3) Limit association business at an annual meeting  
10          conducted with a reduced quorum to the adoption of a  
11          tax resolution and the election of a board of  
12          directors for positions that have expired and are  
13          expiring;
- 14          (4) Restrict the time between the originally-noticed  
15          adjourned annual meeting and the reduced-quorum  
16          adjourned annual meeting to no longer than ninety  
17          days;
- 18          (5) Authorize the board of a condominium association to  
19          terminate a managing agent's contract upon a majority  
20          vote of the association of unit owners;
- 21          (6) Require a condominium association with fifty or more  
22          units to prepare its budget on an accrual basis in  
23          accordance with generally accepted accounting  
24          principles; and

1 (7) Require the use of standardized forms prescribed or  
2 approved by the commission for the condominium unit  
3 owner's request for records and the association's  
4 response to the request for records.

5 SECTION 2. Chapter 514B, Hawaii Revised Statutes, is  
6 amended by adding a new section to subpart B of part VI to be  
7 appropriately designated and to read as follows:

8 **"§514B- Association meetings; failure to obtain a**  
9 **quorum.** (a) Any association shall hold an annual meeting to  
10 conduct business that shall include but not be limited to the  
11 following:

12 (1) Electing, where applicable, to file Internal Revenue  
13 Service Form 1120 or 1120-H as may be amended and  
14 adopting a tax resolution in accordance with any  
15 accompanying revenue ruling as may be amended; and

16 (2) Electing a ~~member as defined in HRS §514B-107(a) unit~~  
17 ~~owner~~ to the board of directors to fill any position  
18 that is expiring or that has expired.

19 (b) If an association is unable to obtain a quorum at any  
20 annual meeting, then the association shall adjourn the annual  
21 meeting and shall set another time for the adjourned annual  
22 meeting in an attempt to obtain quorum, and this meeting shall  
23 be held in sufficient time so that if the quorum is again not  
24 achieved, then the third attempt for the annual meeting, as

1 noted in sub-paragraph (c) below, is held within ninety days of  
2 the first annual meeting up to two more times within ninety days  
3 of the adjourned annual meeting.

4 (c) At the third attempt to obtain quorum, if a quorum is  
5 not achieved, that meeting shall be held within ninety days of  
6 the first meeting, and this adjourned annual meeting shall then  
7 have a quorum requirement of one-half of the requirement as  
8 stated in the bylaws of the association. Association business  
9 conducted at this meeting with a reduced quorum shall be limited  
10 to:

11 (1) Electing, where applicable, to file Internal Revenue  
12 Service Form 1120 or 1120-H as may be amended and  
13 adopting a tax resolution in accordance with any  
14 accompanying revenue ruling as may be amended; and

15 (2) Electing a member as defined in HRS §514B-107(a) unit  
16 owner to the board of directors to fill any position  
17 that is expiring or that has expired.

18 (d) An-Each adjourned annual meeting pursuant to this  
19 section shall be duly noticed in accordance with section 514B-  
20 121(c)."

21 SECTION 3. Section 514B-107, Hawaii Revised Statutes, is  
22 amended to read as follows:

23 **"§514B-107 Board; limitations.** (a) Members of the board  
24 shall be unit owners or co-owners, vendees under an agreement of



1 sale, a trustee of a trust which owns a unit, or an officer,  
2 partner, member, or other person authorized to act on behalf of  
3 any other legal entity which owns a unit. There shall not be  
4 more than one representative on the board from any one unit.

5 (b) No resident manager or employee of a condominium shall  
6 serve on its board.

7 (c) An owner shall not act as an officer of an association  
8 and an employee of the managing agent retained by the  
9 association. Any owner who is a board member of an association  
10 and an employee of the managing agent retained by the  
11 association shall not participate in any discussion regarding a  
12 management contract at a board meeting and shall be excluded  
13 from any executive session of the board where the management  
14 contract or the property manager will be discussed.

15 (d) Directors shall not expend association funds for their  
16 travel, directors' fees, and per diem, unless owners are  
17 informed and a majority approve of these expenses; provided  
18 that, with the approval of the board, directors may be  
19 reimbursed for actual expenditures incurred on behalf of the  
20 association. The board meeting minutes shall reflect in detail  
21 the items and amounts of the reimbursements.

22 (e) Associations at their own expense shall provide all  
23 board members with a current copy of the association's

1 declaration, bylaws, house rules, and, annually, a copy of this  
2 chapter with amendments.

3 (f) The directors may expend association funds, which  
4 shall not be deemed to be compensation to the directors, to  
5 educate and train themselves in subject areas directly related  
6 to their duties and responsibilities as directors; provided that  
7 the approved annual operating budget shall include these  
8 expenses as separate line items. These expenses may include  
9 registration fees, books, videos, tapes, other educational  
10 materials, and economy travel expenses. Except for economy  
11 travel expenses within the State, all other travel expenses  
12 incurred under this subsection shall be subject to the  
13 requirements of subsection (d).

14 (g) Notwithstanding any provision in the declaration, ~~or~~  
15 bylaws, or any other documents to the contrary, the board of an  
16 association managed by a managing agent shall have the ~~exclusive~~  
17 authority to employ, renew, and terminate a managing agent's  
18 contract.

19 (h) Notwithstanding any provision in the declaration, ~~or~~  
20 bylaws, or any other documents to the contrary, at an  
21 association meeting of unit owners a managing agent's contract  
22 may be terminated by an affirmative ~~a~~-vote of a majority of the  
23 unit owners of an association. Pursuant to such vote, ~~taken by~~  
24 a majority of the unit owners, the board shall terminate a

1 managing agent's contract in accordance with the provisions of  
2 the contract, except that the termination shall be within 120  
3 days and without incurring any liability or penalty to the  
4 association of unit owners. Where any provision of the managing  
5 agent's contract relating to the termination of the contract is  
6 unconscionable to the unit owners at the time it was entered  
7 into, the board may terminate the managing agent's contract  
8 without incurring any liability and penalty to the association  
9 of unit owners. An example of a termination provision that is  
10 unconscionable includes but is not limited to a termination  
11 provision requiring the approval vote of eighty per cent of the  
12 unit owners. For purposes of this section, "majority of the  
13 unit owners" shall have the same meaning as in section 514B-3.

14 (i) Subsection (h) does not apply to an association with  
15 units that are one hundred per cent:

- 16 (1) Intended for commercial use; ~~and/or~~
- 17 (2) Designed and constructed for hotel ~~and/or~~ resort use  
18 that are located on any parcel of real property  
19 designated and governed by a county for hotel or  
20 resort use pursuant to section 46-4."

21 (j) A project in which a majority of the units have been  
22 submitted to one or more vacation plans, or in which one or more  
23 units have been submitted to a vacation plan established by the

1 | developer of the project or by an affiliate of the developer,  
2 | shall be exempt from subsections (g) and (h).

3 | SECTION 4. Section 514B-121, Hawaii Revised Statutes, is  
4 | amended by amending subsections (d) and (e) to read as follows:

5 | "(d) ~~{All} Except as provided by this chapter, all All~~  
6 | association meetings shall be conducted in accordance with the  
7 | most recent edition of Robert's Rules of Order Newly  
8 | Revised. If so provided in the declaration or bylaws, meetings  
9 | may be conducted by any means that allow participation by all  
10 | unit owners in any deliberation or discussion.

11 | (e) All association meetings shall be held at the address  
12 | of the condominium or elsewhere within the State as determined  
13 | by the board[+] and at a site on the island where the  
14 | association is located that is convenient and readily accessible  
15 | to the majority of the unit owners; provided that in the event  
16 | of a natural disaster, such as a hurricane, an association  
17 | meeting may be held outside the State."

18 | SECTION 5. Section 514B-148, Hawaii Revised Statutes, is  
19 | amended by amending subsection (a) to read as follows:

20 | "(a) The budget required under section 514B-144(a) shall  
21 | include at least the following:

22 | (1) The estimated revenues and operating expenses of the  
23 | association;

- 1 (2) Information as to whether the budget has been prepared  
2 on a cash or accrual basis; provided that associations  
3 with fifty or more units shall prepare a budget on an  
4 accrual basis in accordance with generally accepted  
5 accounting principles;
- 6 (3) The total replacement reserves of the association as  
7 of the date of the budget;
- 8 (4) The estimated replacement reserves the association  
9 will require to maintain the property based on a  
10 reserve study performed by the association;
- 11 (5) A general explanation of how the estimated replacement  
12 reserves are computed;
- 13 (6) The amount the association must collect for the fiscal  
14 year to fund the estimated replacement reserves; and
- 15 (7) Information as to whether the amount the association  
16 must collect for the fiscal year to fund the estimated  
17 replacement reserves was calculated using a per cent  
18 funded or cash flow plan. The method or plan shall  
19 not circumvent the estimated replacement reserves  
20 amount determined by the reserve study pursuant to  
21 paragraph (4)."

22 SECTION 6. Section 514B-154.5, Hawaii Revised Statutes, is  
23 amended by amending subsection (c) to read as follows:

1           "(c) Notwithstanding any provision in the declaration,  
2 bylaws, or house rules providing for another period of time, all  
3 documents, records, and information listed under subsection (a),  
4 whether maintained, kept, or required to be provided pursuant to  
5 this section or section 514B-152, 514B-153, or 514B-154, shall  
6 be provided no later than thirty days after receipt of a unit  
7 owner's or owner's authorized agent's written request, unless a  
8 lesser time is provided pursuant to this section or section  
9 514B-152, 514B-153, or 514B-154, and except as provided in  
10 subsection (a)(14). A unit owner's or owner's authorized  
11 agent's written request ~~and any response to the written request~~  
12 shall be made on forms prescribed, or approved, by the  
13 commission."

14           SECTION 7. This Act does not affect rights and duties that  
15 matured, penalties that were incurred, and proceedings that were  
16 begun before its effective date.

17           SECTION 8. If any provision of this Act, or the  
18 application thereof to any person or circumstance, is held  
19 invalid, the invalidity does not affect other provisions or  
20 applications of the Act that can be given effect without the  
21 invalid provision or application, and to this end the provisions  
22 of this Act are severable.

23           SECTION 9. Statutory material to be repealed is bracketed  
24 and stricken. New statutory material is underscored.

1 SECTION 10. This Act shall take effect on July 1, 2050.

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**Report Title:**

Condominiums; Owners Associations; Meetings; Managing Agent;  
Termination of Contract; Records; Accessibility

**Description:**

Requires an association of unit owners to adopt a tax resolution and to fill positions on its board of directors for expired or expiring board positions during the association's annual meeting. Allows for rescheduling and reduced quorum requirements if annual meetings cannot be held to adopt a tax resolution or elect a board of directors. Authorizes the termination of a managing agent's service contract by the association in certain circumstances. Establishes requirements for the location of association meetings, the accounting practices of associations, and the request of records by association members. Effective 07/01/2050. (SD1)

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



CHARLES E. PEAR, JR.

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March 15, 2015

Honorable Rep. Angus L. K. McKelvey, Chair  
Honorable Rep. Justin H. Woodson, Vice Chair  
Members of the Committee on Consumer  
Protection and Commerce  
Twenty-Seventh Legislature  
Regular Session, 2014

Re: S.B. 826, S.D. 1  
Hearing on March 16, 2014, 2:00 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.

ARDA Hawaii opposes the bill due significantly to the deletion of the provisions of the earlier drafts providing an exemption for time share condominiums. We understand that some or perhaps all of the other stakeholders find this exemption acceptable and ARDA requests that it be restored.

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

Chair, Vice-Chair and Members,  
House Committee on Consumer  
Protection and Commerce  
March 15, 2015  
Page 2

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 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 we request that 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.

**LATE**

**Date:** March 17, 2015 at 10:46:17 AM HST

Aloha,

I gave verbal testimony at the hearing for SB826, SD1 yesterday afternoon. One of the clerks gave a note to submit my testimony in writing to this address.

What I wanted the committee to be aware of is that in SB826, SD1.. the revised bill talks about the annual meeting if a quorum is obtained to conduct business to include filing Form 1120 or 1120-H with the IRS. Over the weekend, I spoke with a CPA who specializes in condo association matters and he told me that since we are a condominium and most condominiums in Hawaii are a NOT FOR PROFIT 501-C-4 condo association.. We are not a corporation for profit... therefore, not necessary to file 1120 or 1120-H.. That this language about tax should not be included in this bill. Probably should be in Administrative Rules ... Wanted the committee to look into Non Profit 501-C-4 condo association and make decision if this portion of SB826, SD1 should be deleted.

Rep. Mckelvey, Chair said he would look into this matter. Please advise if more information is needed.

Mahalo nui loa  
Alice Clay