

# HB1498 HD1

Measure Title: RELATING TO CONDOMINIUMS.  
Report Title: Condominium Associations; Documents; Unit Owners  
Description: Requires contracts between the association and the resident manager or general manager to be made available to any unit owner, and allows certain personal information to be redacted from the contracts. (HB1498 HD1)  
Companion:  
Package: None  
Current Referral: CPH  
Introducer(s): ICHIYAMA, MCKELVEY, OHNO



DAVID Y. IGE  
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PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE  
ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH STATE LEGISLATURE  
REGULAR SESSION, 2017

TUESDAY, MARCH 21, 2017  
9:00 A.M.

TESTIMONY ON HOUSE BILL NO. 1498 H.D.1 PROPOSED S.D.1  
RELATING TO CONDOMINIUMS

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND TO THE HONORABLE CLARENCE K. NISHIHARA, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 1498 H.D.1, Proposed S.D.1, Relating to Condominiums. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following enforcement-related comments on Part I of the bill.

House Bill No. 1498 H.D.1, Proposed S.D.1, Part I, requires the disclosure of contracts between an association and its resident or general manager to a unit owner and allows for any personal information to be redacted. Part II clarifies the election, removal, and replacement processes of directors and Part III clarifies the procedures to

amend certain condominium association governing documents that are not materially adverse to owners.

Part 1 of House Bill No. 1498 H.D.1, Proposed S.D.1, identifies the types of personal information that may be redacted when a contract between an association and its manager is disclosed. The listed information, though not meant to be exhaustive, is consistent with Chapter 487N, Hawaii Revised Statutes ("HRS"), the Security Breach of Personal Information Chapter, and Chapter 92F, HRS, Hawaii's Uniform Information Practices Act.

RICO believes that enumerating specific types of personal information that may be redacted in a contract will assist condominium associations in their disclosure efforts and welcomes clarification in this area.

RICO takes no position on Parts II and III of the Proposed S.D.1, which relate to condominium self-governance.

Thank you for the opportunity to testify on House Bill No. 1498 H.D.1, Proposed S.D.1. I will be happy to answer any questions the Committee may have.



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

March 20, 2017

Hon. Senator Rosalyn H. Baker, Chair  
Hon. Senator Clarence K. Nishihara, Vice-Chair  
Senate Committee on Commerce, Consumer Protection, and Health (CPH)  
Hawaii State Capitol, Room 230  
415 South Beretania Street  
Honolulu, HI 96813

**RE: COMMENTS regarding HB1498 SD1 (Proposed) with Amendments; Hearing Date: March 21, 2017 at 9:00 a.m. in Senate conference room 229; sent via Internet**

Aloha Chair Baker, Vice-Chair Nishihara, and Committee members,

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

The Hawaii State Association of Parliamentarians ("HSAP") has been providing professional parliamentary expertise to Hawaii since 1964.

I am the chair of the HSAP Legislative Committee. I'm also an experienced Professional Registered Parliamentarian who has worked with condominium and community associations every year since I began my practice in 1983 (over 1,500 meetings in 33 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2004.

This testimony is provided as part of HSAP's effort to assist the community based upon our collective experiences with the bylaws and meetings of numerous condominiums, cooperatives, and Planned Community Associations.

These COMMENTS are provided in order to propose improvements to the condominium process for our entire state. We will address each Part separately since each one identifies a remake of a previous bill.

## **PART I (Section 1)**

This Part was part of the original HB1498 and HB1498 HD1. It proposed to require the disclosure of contracts between an association and its resident or general manager to a unit owner. It was amended to allow for certain personal information to be redacted.

We suggest the following:

1. Please consider including, “written job descriptions” and “compensation” as a specific part of these requirements.

Manager contracts have included statements such as, “as prescribed by the property manager” or “as prescribed by the board of directors.” A separate document may contain the job descriptions and compensation should also be disclosed, regardless of where the information is stored.

2. Please consider “any person or entity” retained by the association to manage, onsite, the operations of the property.

HRS §514B-3 defines a resident manager as “any person retained as an employee by the association to manage, on-site, the operation of the property.” Associations may have operations managers, site managers, security managers, and use different terminology. In some cases site managers are independent contractors or separate companies and their employment relationship may be different.

We suggest the following revised wording for the Committee's consideration:

“(15) A copy of any contract **written job descriptions, and compensation** between the association and ~~[the general manager or resident manager]~~ **any person or entity retained by the association to manage, on-site, the operation of the property, including but not limited to the general manager, operations manager, resident manager, site manager**, as the case may be; provided that personal information may be redacted from the contract copy, including but not limited to any individual's date of birth, age, signature, social security number, residence address, telephone number, non-business electronic mail address, driver's license number, Hawaii identification card number, bank account number, credit or debit card number, access code or password that would permit access to the individual's financial accounts, or any other information that may be withheld under state or federal law.”

## **PART II (Sections 2-4)**

This Part parallels the wording in SB393 to correct an inequity in the election process relating to non-residential units and representation on the board of directors. SB393 has already been vetted in the Senate and at least one House Committee.

**We support the changes proposed in this Part as is.**

### PART III (Sections 5-9)

This Part parallels the wording in SB104 SD1. We still must OPPOSE this Part for the reasons enumerated below.

1. This Part's stated purpose, "Clarifies the procedures to amend condominium association declarations, bylaws, and other governing instruments that are not of a material adverse nature to condominium owners or do not imperil the viability or stability of the condominium association."

The reality is that this Part provides for a reduced voting mechanism for amendments of association documents that are:

- (a) not of a material adverse nature to condominium owners, or
- (b) do not imperil the viability or stability of the condominium association.

**Neither Chapter 514B nor this Part provide any definition of the terms, "material adverse nature" or "imperil the viability or stability" of the condominium association.**

2. This Part proposes changes to Chapter 514A and Chapter 514B regarding amendments to documents. Briefly it provides:
  - (a) The voting or written consent of a declaration or bylaw amendment **shall cease** if required approval is obtained prior to 365 days.
  - (b) The voting or written consent of a declaration or bylaw amendment **shall cease** if a specific percentage is in the negative so that passage is unobtainable.
  - (c) If approval is **not obtained by 365 days**, then the **vote requirement is lowered** based upon the percentage of apartment owners who voted rather than the percentage of the common interest in favor of a specific amendment.
3. This Part fails to recognize that ownership changes occur during the one year written consent process and many boards and property managers exceed the threshold for amendment in case one or more of the written consents are not correct. It also fails to accommodate ownership changes that may occur during the one year written consent period.

**The voting process should logically cease when an association through its management acknowledges the results and records the amendment, not when somebody assumes that passage may or may not be "unobtainable".**

4. The requirement for adoption is reduced from a specific percentage of the common interest to a percentage of those responding to the written consent. **Without publicly disclosing the methodology, this bill, if it becomes law, can permit a rogue board to quietly adopt an amendment to the declaration or bylaws in an association where members are apathetic or live outside of the state or country.**

5. The impact on foreign owners occurs because many of them will not respond or vote unless they are provided with written information **in their native language**.
6. The flaw in this Part is further **exacerbated** by limiting amendments to those that are not of a “material adverse nature” or “imperil the viability or stability” of the condominium association.

The use of terms such as “material adverse nature” or “imperil the viability or stability” of the condominium association contains enough ambiguity that the final definition of whether an association exceeded their authority to amend the documents could be left up to the judicial system. This resolution could occur years after an amendment has been adopted.

The following are only a few of many hypothetical examples which could impose controversial changes on an association through manipulation of the bylaws amendment system proposed by this Part. **None of these hypothetical examples represent our position on these particular issues.**

- (a) Increase directors' terms from 3 to 5 years during a complex reconstruction period so as to maintain stability during that time.
  - (b) Change “cumulative voting” policy with a lower voting percentage and argue there is no effect on stability, thereby disenfranchising many owners.
  - (c) Remove previously adopted term limits due to the alleged instability caused by large turnovers on the board.
7. A finding by a Court that a bylaw amendment adopted through this Part violated FannieMae Section 601.03 could also have negative ramifications on financing.
  8. The only public written testimony in favor of the original SB104 were the following: American Heart Association; American Stroke Association; Hawaii Public Health Institute; Coalition for a Tobacco-Free Hawaii; David Dockstetter and Diane Neubert owners in Keauhou Akahi Condominium (48 units)

It is clear from the supportive testimony that the individuals testifying from the 48 unit condominium association were upset because they only got 32 out of 48 votes or 66.67% to prohibit smoking in people's homes. Apparently, they needed only 1 more consent to approve the bylaw amendment (68.75%) and they were upset that 8 owners did not turn in their ballots.

**This Part may solve their voting problem but definitely won't solve their non-smoking issues.**

The minority would argue that a prohibition on their smoking behavior would obviously, “imperil the viability or stability” of the association and thus the amendment should be declared null and void. They would also argue that this amendment has a “material

adverse nature to condominium owners”, since it is regulating private behavior in their units. The result would be a court battle of whether this type of bylaw could even be amended under the exception provided by this Part.

We're opposed to enacting legislation unless there is a compelling public need (such as previously demonstrated by relevant testimony for the other Parts).

**The dilution of the voting requirement to amend association documents through this Part based upon one 48 unit condominium's failure to ban smoking by 1 vote doesn't, in our opinion, justify this type of legislation.**

**Part III proposes to authorize a process that can irreparably damage condominium associations. We suggest that this entire amendment be deferred until more information is available as to whether a compelling public need truly exists.**

## **PART IV (Sections 10-12)**

This is standard legislative terminology and we express no opinion on it.

### **SUMMARY**

**We support Part I with amendments, Part II as is, and request striking out Part III.**

Thank you for your consideration. We are available to answer any questions or assist the Committee with any additional testimony.

If you require any additional information, your call is most welcome. I may be contacted via phone: 423-6766 or by e-mail: [hsap.lc@gmail.com](mailto:hsap.lc@gmail.com). Thank you for the opportunity to present this testimony.

Sincerely,

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





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



March 19, 2017

Sen. Rosalyn Baker, Chair  
Sen. Clarence Nishihara Vice-Chair  
Senate Committee on Commerce, Consumer Protection & Health

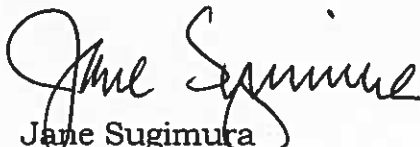
Re: Testimony in Support and Comments to  
HB1498, HD1 RELATING TO CONDOMIMUMS  
Hearing: Tues., March 21, 2017, 9 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Nishihara and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA). This organization represents the interests of condominium and community association members.

HCAAO supports the intent and purpose of the proposed SD1 to HB1498 and to that extent incorporates by reference the comments and suggested amendments by Steve Glanstein of the Hawaii State Association of Parliamentarians. In addition, since the original intent and purpose of amendment to HRS 514B-154 was to disclose the compensation and job description or job duties of a resident manager or site manager or the manager that is in charge of the daily operations of a condominium project, we urge a further amendment to Mr. Glanstein's suggestion by including the word "compensation."

Thank you for the opportunity to testify on this matter.

  
Jane Sugimura  
President

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 20, 2017 8:09 AM  
**To:** CPH Testimony  
**Cc:** alohaaclay@hawaii.rr.com  
**Subject:** Submitted testimony for HB1498 on Mar 21, 2017 09:00AM

**HB1498**

Submitted on: 3/20/2017

Testimony for CPH on Mar 21, 2017 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alice Clay	Hui Malama O Hale	Support	Yes

Comments: I requested a copy of our Administrator's contract from BOD and managing agent and what I received was worthless since it redacted her job responsibilities, duties and salary. Requested more than once and was denied. Therefore, I mediated under Act 187 and Mediator advised administrator and her attorney (paid for by AOAO funds) they needed to comply and they have not and will not comply. Since owners pay her salary and benefits, all owners are entitled to under Act 188 to receive a copy of her contract. Please pass HB1498. Malama Pono..

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 19, 2017 7:31 PM  
**To:** CPH Testimony  
**Cc:** lila.mower@gmail.com  
**Subject:** Submitted testimony for HB1498 on Mar 21, 2017 09:00AM

**HB1498**

Submitted on: 3/19/2017

Testimony for CPH on Mar 21, 2017 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lila Mower	Hui `Oia`i`o	Oppose	No

Comments: Hui `Oia`i`o opposes the proposed HB1498 HD1 SD1. It is unfortunate that Legislators amended HB1498 HD1 with the distasteful provisions of measures SB104 (companion HB897) and SB393 (companion HB648), thereby ensuring that condo owners within the Hui will be unable to support this proposed measure which originally provided condo owners greater transparency in their association's governance. Hui Oia`i`o opposes measures which diminish condo owners' voting rights and exposes them to further disenfranchisement. SB104/HB897 was flawed because there was no assurance that all owners would be properly notified of the requirement for their consent and there was no assurance that their consent would be properly sought. SB393/HB648 marginalized owners by putting more voting power in the hands of incumbent boards, in conflict with current HRS514B-123(c), "No votes allocated to a unit owned by the association may be cast for the election or reelection of directors," a statute which is more protective of owners' rights. Mahalo. Lila Mower of Hui `Oia`i`o

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 19, 2017 3:37 PM  
**To:** CPH Testimony  
**Cc:** richard.emery@associa.us  
**Subject:** Submitted testimony for HB1498 on Mar 21, 2017 09:00AM

**HB1498**

Submitted on: 3/19/2017

Testimony for CPH on Mar 21, 2017 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Associa	Comments Only	Yes

Comments: I support the provision that mandates that the employment contract be provided to requesting owners less redacted information. That provision should be made more clear that the job duties and compensation must be provided; otherwise, it will come back next year. That is the problem. I oppose the reduced percentage to amend the governing documents. The language is vague and subject to interpretation. The governing documents are very important and I am not aware of difficulty in amending documents although it does take effort. If there is a specific issue simply reduce the threshold to a majority of all owners (50.1%) and clearly define its applicability.

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M. Anne Anderson  
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Pamela J. Schell  
Paul A. Ireland Koftinow  
Glenn S. Horio

March 20, 2017

Senator Rosalyn H. Baker, Chair  
Senator Clarence K. Nishihara, Vice Chair  
Senate Committee on Commerce, Consumer Protection, and Health  
Hawai'i State Capitol  
415 South Beretania Street  
Honolulu, Hawai'i 96813

RE: Testimony Re: H.B. No. 1498, S.D.1  
Hearing Date: March 21, 2017, at 9:00 a.m., Conference Room 229  
The Twenty-Ninth Legislature; Regular Session of 2017

Dear Chair Baker, Vice Chair Nishihara, and Committee Members:

Thank you for the opportunity to submit testimony related to H.B. No. 1498, S.D.1. I offer testimony in opposition to Parts I and III and in support of Part II. I am a partner in the law firm of Anderson Lahne & Fujisaki LLP A Limited Liability Law Partnership. I have represented condominium associations in Hawai'i for over thirty years.

**Part I.**

Part I of the bill will require condominium associations to disclose compensation and employee benefits to members of an association. This creates both liability and morale concerns. The liability concern arises by the fact that employees are often given assurances that compensation and benefits will be kept confidential when they are hired or via employee handbooks. Even without a promise of confidentiality, employees may have an expectation of privacy and the association could be held liable under common law tort law. Requiring the disclosure of such information will place associations in the position of having to decide whether to violate HRS Section 514B-154.5 and risk criminal and civil penalties<sup>1</sup> or risk civil liability. Associations should not be placed in this position.

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<sup>1</sup> HRS § 514B-69 provides:

(a) Any person who violates or fails to comply with this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, or section 514B-154.5, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000, or by imprisonment for a term not exceeding one year, or both. Any person who violates or fails to comply with any rule, order, decision, demand, or requirement of the commission under this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, or section 514B-154.5, shall be punished by a fine not exceeding \$10,000.

Senator Rosalyn H. Baker, Chair  
Senator Clarence K. Nishihara, Vice Chair  
Senate Committee on Commerce, Consumer Protection, and Health  
March 20, 2017  
Page 2

Furthermore, if the resident or general manager's compensation and benefits are made known to the owners, most likely this information will also be made known to other association employees which may create morale issues if they are paid less or receive fewer benefits. Finally, once this information gets out, the association will have a hard time hiring a new manager at a lesser rate because anyone applying for the job will expect to be paid as much as the previous manager. For these reasons, I urge you not to pass Part I.

**Part II.**

I support Part II of the bill for the same reasons that I supported S.B. 393.

**Part III.**

I oppose Part III. Declarations and bylaws are very important documents and should not be amended without a significant vote of the owners. This bill has the potential for allowing a very small percentage of owners to amend these documents. The language in the bill which states that the exception which would allow amendments by a much lower percentage applies only to amendments that "are not of a material adverse nature to unit owners or do not imperil the viability or stability of the association" will undoubtedly result in litigation over its interpretation. If the purpose of the bill is to allow amendments on specific issues by a lower vote, it would be best to carve out an exception for those amendments and establish a percentage vote needed for those amendments. For example, if the focus is on an amendment to prohibit smoking, it would be better to simply change the law to allow amendments prohibiting smoking by a lesser percentage of owners, such as a owners representing a majority of the common interest.

Sincerely,



M. Anne Anderson

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(b) In addition to any other actions authorized by law, any person who violates or fails to comply with this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, or the rules of the commission adopted pursuant thereto, shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 20, 2017 9:47 AM  
**To:** CPH Testimony  
**Cc:** sbradley@wcchc.com  
**Subject:** Submitted testimony for HB1498 on Mar 21, 2017 09:00AM

**HB1498**

Submitted on: 3/20/2017

Testimony for CPH on Mar 21, 2017 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Stephen Bradley MD	Individual	Comments Only	No

Comments: Part III of this bill jeopardizes my investment in & control of my private property. My condominium apartment is the place I will live through my remaining life & pass on to my children. It is unconscionable that a law be passed that both strips me of my rights in my private domain & allows a distinct minority to control the functioning of the entire enterprise. Shame on all of you for allowing this abomination to get this far.

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**Richard J. Port**  
**1600 Ala Moana Blvd. #3100**  
**Honolulu, Hawaii 96815**  
**Tel 808-941-9624**  
**e-mail: [portr001@hawaii.rr.com](mailto:portr001@hawaii.rr.com)**

**Measure:** HB 1498, HD1, SD1

**Date and Time of Hearing:** Tuesday, March 21, 2017 9:00 a.m.

**Committee:** Committee on Commerce, Consumer Protection & Health

Aloha Senator Baker and Members of your Committee

Thank you for this opportunity to testify in support of HB 1498, HD1, SD1.

Many of the concerns raised by condominium owners have involved their inability to obtain information from their condominium Boards regarding the job descriptions, including the duties and compensation of their general managers, their resident managers, and any persons retained as an employee to manage the on-site operation of the property.

This bill will eliminate the ambiguity that currently exists regarding whether or not condominium owners are entitled to have this information.

I would appreciate your committee's support for HB 1498, HD1, SD1.

Richard Port



***Capt. T. J. Davies, Jr. (Ret.)***  
***909 Kapiolani Blvd # 601***  
***Honolulu, HI 96814-2132***  
***tjdavies@juno.com***  
***808-593-1026***

19 March 2017

To: Committee on Commerce, Consumer Protection, & Health, Senator Rosalyn H. Baker, Chair

Date: Tuesday, March 21, 2017, 9:00 a.m., Room 229

**Re: HB 1498, HD1, Relating To Condominium Governing Instruments.**

Chair Baker, Vice Chair Nishihara and members of the committee:

My name is T. J. Davies Jr. I am 82 years old, retired and live in Kakaako. I have been a resident of Hawaii for 58 years and a condominium owner for 27 years. I am an AOA Board member having served for over 20 years on both past and present condominium boards as Treasurer and Director.

I am writing in **STRONG OPPOSITION** to HB 1498, HD1, Relating to Condominium Governing Instruments regarding the Procedures to Amend Condominium Association Declarations, Bylaws, and other Governing Instruments.

HB 1498, HD1 proposes to further lower the threshold for amending condominium documents such as Declarations and Bylaws. Such a proposal if passed would lead to instability and tyranny at condominiums. It would allow a minority of extreme owners to “rule” and oppress the silent majority of owners. Condominium documents set the foundation for day to day life at condominiums, especially in regards to use of common elements. Amending condominium documents must have a high threshold. It should not be changed at the whim of a small minority. Currently the statutes have procedures to amend condominium associations’ documents that is fair to all owners.

Thank you for the opportunity to provide testimony in **Strong Opposition to HB 1498, HD1.**

T. J. Davies Jr., Volunteer  
Director, AOA 909 Kapiolani  
Treasurer, AARP Chapter 60 Honolulu  
Treasurer, Kokua Council for Senior Citizens of Hawaii Education Fund  
Director, Hawaii Alliance for Retired Americans  
Kakaako (District 26 / Senate District 12)

Hearing Date: Tuesday, March 29 , 2017

Time: 9:00 AM

Place: Conference Room 229

Committee on Commerce, Consumer Protection & Health  
The Senate, the 29<sup>th</sup> Legislature  
Regular Session of 2017

**RE: Testimony for Against of HB 1498 , H.D. 1 , S.D.1**

Submitted by John White Sr.

[jwhite888@gmail.com](mailto:jwhite888@gmail.com)

Aloha, Chair Baker, Vice Chair Nishihara and Committee Members,

This bill if passed will take away more democratic rights to self-governance than any other bill I have seen to date. Just one part of this bill will empower any board or other small group of individuals the ability to propose and pass with relative ease new association bylaws, declarations and other governing instruments by changing the current state law that requires a absolute 67% yea vote of association members. Lowering the threshold of the number of votes necessary to pass bylaws or other association official matters is a dangerous attack of what little checks and balances are available to the members of the association. The threshold of percentage of member votes has already been lowered once from 514A's requirement of 75% member approval to the current 67%.

The second part of this bill that is troubling is giving the association boards more direct voting power. The voting system for associations when electing new board members can be best described as a hybrid election process. Generally, you are given a proxy with four options. For the VAST MAJORITY of board elections you DO NOT directly vote for individual board members. Most association members regularly checkmark either box 1 or box 2. The following example below is similar to what most associations use.

**BOX 1-** The Board of Directors as a whole, to be voted on the basis of the preference of a majority of the director's present at the meeting.

*( Serving on a number of boards I have found this to be the most popular selection by homeowners. This selection serves to keep the same people in power and fellow board members to not challenge the status quo. If you want your fellow board members to vote you back in " don't rock the boat for the rest of your fellow directors" ).*

**Box 2-** The Directors present at the meeting and the vote to be shared with each Board member receiving an equal percentage.

*( This option while not nearly as popular is a much more democratic designation of a members proxy and gives an individual board member to vote independent of the board as a group)*

So you can see by automatically assigning proxies to the board to vote as they please is just one more right taken away from homeowners. What is needed is an educational campaign on how the voting system is structured and how important it is to treasure your vote ( proxy ) and use it wisely .

I have attached a copy of a recent association proxy.

Mahalo,  
John White Sr.

ASSOCIATION OF UNIT OWNERS

██████████ KAPOLEI

PROXY

The undersigned does hereby constitute and appoint (CHECK ONE):

- The Board of Directors as a whole, to be voted on the basis of the preference of a majority of the directors present at the meeting.
- The Directors present at the meeting and the vote to be shared with each Board member receiving an equal percentage.
- NO ONE - for quorum purpose only.  
(Your managing agent recommends against this choice as it could have an adverse affect on you as an owner and on the Association's ability to conduct business at the meeting.)
- \_\_\_\_\_  
The Individual whose name is printed on this line.

as attorney or agent, with full power of substitution, to act in the undersigned's name, place, and stead, and to vote as the undersigned's proxy at the ANNUAL MEETING ██████████ Kapolei to be held Tuesday, ██████████, 2017 at 7:00 pm at KAPOLEI ██████████ - CONFERENCE ROOM for the transaction of agenda business that may come before the meeting, including but not limited to the election of Directors, that the undersigned would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that said attorney or agent may do by virtue thereof. This proxy will be valid only for the above cited meeting and adjournments thereof, may be removed prior to its exercise. If this proxy is assigned to someone other than the Board of Directors and said person fails to attend the Annual Meeting, this proxy shall only be used for the purpose of establishing a quorum.

For this proxy to be valid:

- (a) The proxy giver must provide the date that the proxy is signed, his or her printed name, signature, apartment lot number(s), and the name of the proxy holder if other than the Board of Directors, and
- (b) This proxy must be received by the Association's Managing Agent or Secretary no later than 4:30 p.m. on Thursday, ██████████, 2017. FAX PROXY TO: 1.888.608.4021 or Email: ██████████@associahawaii.com.

Please sign your name as it appears in the Association's records. Executors, administrators, trustees, guardians, conservators and corporate officers are to add their titles and, if not already done, submit a copy of their appointment.

Unit/Lot: \_\_\_\_\_

\_\_\_\_\_  
PRINTED Name of Owner

X \_\_\_\_\_  
SIGNATURE of Owner (REQUIRED BY LAW):

DATE SIGNED: \_\_\_\_\_  
(required by law)

\_\_\_\_\_  
PRINTED Name of Owner

X \_\_\_\_\_  
SIGNATURE of Owner (REQUIRED BY LAW):

DATE SIGNED: \_\_\_\_\_  
(required by law)

Internal Use Only  
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**Sandra-Ann Y.H. Wong**

*Attorney at Law, a Law Corporation*

*1050 Bishop Street, #514*

*Honolulu, Hawaii 96813*

**TESTIMONY IN STRONG OPPOSITION TO HB 1498, proposed SD1**

Before the Committee on Commerce, Consumer Protection & Health

on Tuesday, March 21, 2017 at 9a.m.

in Conference Room 229

Aloha Chair Baker, Vice Chair Nishihara, and members of the Committee:

I respectfully submit testimony in **strong opposition to HB1498, proposed SD1**. Specifically proposed Part III which asserts to clarify the procedures to amend condominium association declarations, bylaws, and other governing instruments that are not of a material adverse nature to condominium owners or do not imperil the viability or stability of the condominium association. I would respectfully submit that the proposed language in Part III of the proposed SD1 does not provide clarification, but rather just confuses the issue.

For example, no definition is provided for “material adverse nature to condominium owners or do not imperil the viability or stability of the condominium association.” This language is too vague and ambiguous and will lead to havoc and lawsuits at AOAOs.

Even if a definition was provided, the proposed language would permit a minority of extreme owners to “rule” and oppress the silent majority of owners. The condominium documents sets the foundation for day to day life at condominiums, especially in regards to use of common elements. Declarations and Bylaws govern all common elements, who is eligible to be on the condominium Board, whether the condominium is pet friendly; whether the condominium is non-smoking, etc. In other words, the Declarations and Bylaws, governs the lives of every single owner 24/7. Thus, like our Federal and State Constitutions, amending condominium documents must have a high threshold. It should not be changed at the whim of a small minority. Owners who choose not to vote are making a statement. They understand that their non-voting is equivalent to a “No” vote.

When owners purchase a condominium they review the condominium documents to see if a particular condominium is right for them. For example, if you smoke, you don’t want to buy into a non-smoking building or if you don’t like pets, you don’t want to buy into a pet friendly building. Thus, it is unfair to change the rules of the game on owners, unless a super majority of **ALL** owners are in favor of such a change. If a prospective owner does not like what is set out in the Declarations and/or Bylaws of a condominium, that prospective owner has a choice of looking for another condominium that has Declarations and Bylaws that are a better fit for his/her lifestyle.

*Telephone: (808) 537-2598*

*e-mail: sawonglaw@hawaii.rr.com*

Moreover, a lower threshold will lead to instability. With a low threshold, it increases the probability of condominium documents being changed frequently. This would cause mayhem at condominiums. E.g. one day you can only wear blue slippers in the common areas, the next day blue slippers are forbidden, the day after only blue and yellow slippers are permitted. Would the color of the slipper you wear qualify as a change that is not a “material adverse nature to condominium owners or do not imperil the viability or stability of the condominium association”?

Additionally, making an exception for changes that do not have “material adverse nature to condominium owners or do not imperil the viability or stability of the condominium association “creates a slippery slope and will actually imperil the viability and lead to instability of the condominium. What will be the next exception?

Currently the statute has a procedures to amend condominium associations’ documents that is fair to **ALL** owners. Similar language is in SB104 and when it went to hearing there was strong opposition from the condominium community. The minority that did support it, was not looking for what was best for the public interest, rather they were just advocating for their special interest. Thus, I strongly urge you to not give in to special interest, but think of what is best for **ALL** condominium owners, by deleting the language in Part III of the proposed SD1.

Thank you for the opportunity to provide testimony in **Strong Opposition to HB1498, proposed SD1, Part III.**

66 Queen Street #3501  
Honolulu, Hawaii 96813

March 19, 2017

Hawaii State Legislature  
Senate Committee on Commerce, Consumer Protection, and Health

Re: HB243, HD2, Proposed SD1 and HB 1498, HD1, Proposed SD1  
Both Relating to Condominiums

Dear Chair Baker, Vice Chair Nishihara and  
Members Chang, Espero, Ihara, Kidani, and Ruderman

I am writing in opposition to both HB243, HD2, Proposed SD1 and HB 1498, HD1, Proposed SD1, in their current forms.

As for HB 243, HD2, Proposed SD1, I urge this Honorable Committee to re-insert the language from HB 243, HD2 pertaining to HRS § 514B-107 – specifically, "(a) Members of the board shall be unit owners or co-owners, vendees under an agreement of sale, a trustee of a trust which owns a unit, or an officer, partner, member, or other person authorized to act on behalf of any other legal entity which owns a unit[-]; provided that no member of the board shall be a renter of a unit. There shall not be more than one representative on the board from any one unit."

The original language of HB 243, HD2 should not have been removed from HB 243, HD2, Proposed SD1 and needs to be re-introduced into HB 243, HD2, Proposed SD1.

I have lived in Hawaii for nearly 20 years. During most of my time in Hawaii, I have lived in condominiums – first as a renter and now as an owner. I believe condominium board membership should be reserved for owners. HB 243, HD2 would have made clear that only those individuals who have ownership interests in the condominium project will be allowed to serve on the board of directors.

When I was a renter, even though I paid rent, I did not have the same interest in keeping the condominium property values high. My main focus was keeping my rent from increasing. Now that I am an owner, I am focused on keeping my property values high, which will cause rents to increase. Thus, renter's perspectives are different from owner's needs.

Consequently, I do **not** support HB243, HD2, Proposed SD1 as it is currently written. I humbly request that the Senate Committee on Commerce, Consumer Protection, and Health revise HB243, HD2, Proposed SD1 by re-inserting the language from HB 243, HD2 to prevent renters from serving on the board of

directors. It is illogical and counterintuitive to allow renters to serve on condominium boards of directors.

Further, I do not support HB 1498, HD1, Proposed SD1, which proposes to revise HRS §§ 514B-32 and 514B-108 pertaining to amending the declaration and bylaws. Amendments to the declaration and bylaws of a condominium project affect mortgage underwriting through FannieMae and FreddieMac. As the terms “material adverse nature to owners or do not imperil the viability or stability of the association of apartment owners” are not defined in HB 1498, HD1, Proposed SD1 and are vague and overbroad and may permit amendments which could possibly impact underwriting requirements. These provisions bear further, closer scrutiny for possible negative impacts.

Thank you for the opportunity to provide written testimony in opposition to sboth HB243, HD2, Proposed SD1 and HB 1498, HD1, Proposed SD1, in their current forms.

Very truly yours,

*Sandy Ma*

Sandy S. Ma



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 19, 2017 2:20 PM  
**To:** CPH Testimony  
**Cc:** patriciablair@msn.com  
**Subject:** \*Submitted testimony for HB1498 on Mar 21, 2017 09:00AM\*

**HB1498**

Submitted on: 3/19/2017

Testimony for CPH on Mar 21, 2017 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patricia Blair	Individual	Oppose	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:** Sunday, March 19, 2017 1:38 PM  
**To:** CPH Testimony  
**Cc:** lynnehi@aol.com  
**Subject:** Submitted testimony for HB1498 on Mar 21, 2017 09:00AM

**HB1498**

Submitted on: 3/19/2017

Testimony for CPH on Mar 21, 2017 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow	Individual	Oppose	No

Comments: Please accept this as testimony in strong opposition to the proposed SD1, HB1498. You should immediately withdraw it and instead concentrate on the bill forwarded from the House. I became enraged when I learned of this sneaky gut and replace. You are stealing from me and I do not condone that, not one iota. The author(s) and perpetrator(s) of this unconscionable taking of my rights deserve to be taken to the woodshed. This is hewa, This is wrong. This is duplicitous. The language relating to changing voting requirements for the governing documents of condos takes away my rights, both as a condo owner and resident. A by product will be lower prices for condominiums. I paid good money for my home, which I have lived in for almost 30 years. I know that a small group cannot tyrannize me and stage a coup d'etat. Or at least not until this heinous document, which is nothing other than again trying to ram SB104 down our throats, saw the light of day. What this does is allow proposed amendments to become effective based on low voter turnout. My condo has 396 units. If only 10 people vote and seven vote in favor of an amendment it would pass. Seven out of 396. That isn't even two percent. I suggest we have legislative rules that say representatives of odd numbered districts only get to vote on odd numbered days and even numbered districts only on even numbered days. Absurd, yes. But no less absurd than this proposed SD1, aka SB104 2.0. Testimony on Senate Bill 104 shows clearly that its intent is to ban smoking in condominiums. Testimony was almost universally opposed except for anti smoking groups and individuals who can't get smoking bans passed in their properties. I spoke with condo owners who are non-smoking, like me. They are outraged. We all agree that if non-smoking came to a vote we would all oppose it. Something to do with property rights, if you have heard about them. The American Heart/American Stroke Association and Coalition for a Tobacco-Free Hawaii should not be telling condo owners how to run their properties. In a poor attempt to appease the opponents, this committee then crafted SD1. The committee report says: "your Committee has heard testimony that lowering this threshold requirement could result in unintended consequences. Your Committee notes that a condominium's declaration and bylaws function as the governing foundation for day to day life at condominiums. Your Committee has heard the concerns that lowering the threshold to amend these documents could lead to instability within a condominium, especially if a

proposed amendment to a governing document was of a material nature, or otherwise affected the viability or stability of a condominium association, such as amendments affecting voting rights, increases in assessments, responsibility for maintenance and repairs, or hazard and fidelity insurance requirements. Your Committee understands these concerns and concludes amendments to this measure are necessary. "Your Committee has amended this measure by: "(1) Clarifying that the procedures to amend condominium association declarations, bylaws, and other governing documents shall only apply to those proposed amendments that are not of a material adverse nature to condominium owners or do not imperil the viability or stability of the association..." What balderdash! What does material adverse nature mean? A first year law student, or even someone not that proficient in the law, could easily argue that anything is of a material adverse nature. Color of the building, color of window treatments, election of directors, date and frequency of annual and board meetings, whether or not to have a site manager, whether to hire a property management company, requiring homeowners insurance, holding a hot fudge party, testifying at the legislature. And, oh yeah, there will be lawsuits. This will be tied up in the courts for years. In addition, you sidestepped serious testimony that said Fannie Mae requires at least 67% approval to make amendments of a material nature to project documents, which includes voting rights, the voting rights you are abridging. Freddie Mac, the FHA, and VA all have similar requirements. What about other lenders? Are you trying to destroy self governing condominiums? If so, entitle the bill Abolishing Condominiums. Be truthful. Are you trying to assure that many prospective homeowners will not be able to get mortgages? Sounds like the answer is yes. My condo board discussed SB104 and voted to oppose it, for the reasons outlined in testimony before this committee. Testimony will be forthcoming in the house. You should know that we did successfully amend our governing documents several years ago. It can be done. Others have done it too. But it has to be done the proper way, with the voting requirements that are in effect now staying intact. Not with backroom deals and sneaky gut and replace, in the hope you can wear down the opposition, or sneak it by them, or whatever. And I thought nothing could be worse than what is happening in DC. Stupid me. Lynne Matusow 60 N. Beretania, #1804 Honolulu, HI 96817 531-4260

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 18, 2017 1:11 PM  
**To:** CPH Testimony  
**Cc:** mendezj@hawaii.edu  
**Subject:** \*Submitted testimony for HB1498 on Mar 21, 2017 09:00AM\*

**HB1498**

Submitted on: 3/18/2017

Testimony for CPH on Mar 21, 2017 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 18, 2017 12:28 PM  
**To:** CPH Testimony  
**Cc:** mrckima@gmail.com  
**Subject:** Submitted testimony for HB1498 on Mar 21, 2017 09:00AM

**HB1498**

Submitted on: 3/18/2017

Testimony for CPH on Mar 21, 2017 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marcia Kimura	Individual	Support	No

Comments: It is a given that condo property owners should know what the boundaries are for resident managers' responsibilities and powers which should never be didacted from copies for viewing.

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## CPH Testimony

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**From:** liis@hawaii.rr.com  
**Sent:** Sunday, March 19, 2017 9:54 AM  
**To:** CPH Testimony  
**Subject:** HB243, Proposed SD1 and HB1498, Proposed SD1: Strong OPPOSITION to both bills, being heard on Tuesday, March 21 at 9a.m. in Rm. 229

To: The Committee on Commerce, Consumer Protection, and Health:

I am writing in STRONG OPPOSITION to the proposed SD1s for HD243 and HB1498.

In regards to HD243, proposed SD1 I am opposed because it gutted the original intent of the bill. The provision to HRS Section 514B-107 needs to be put back in. There is a serious problem of AOAO Boards having renters as Board members. This needs to be prohibited because the interest of owners and renters are not the same. Moreover, renters can come and go and, thus, do not have a vested interest in the AOAO.

In regards to HB1498, proposed SD1, I am opposed to Part III. First of all what does "are not of a material adverse nature to condominium owners or do not imperil the viability or stability of the condominium association" mean. This language is too subjective and will lead to havoc at AOAOs. Any change will be a material adverse effect to at least one owner. Also, the very nature of a change will cause instability. Declarations, bylaws, and other governing instruments are the "Constitution" for AOAO's, thus changes should not be made without input from all owners. When owners do not vote, it is a "NO" vote. Part III needs to be removed from the proposed SD1.

Thank you,  
L. Fujimoto and Ohana, condo owners

## CPH Testimony

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**From:** beeps@hawaii.rr.com  
**Sent:** Sunday, March 19, 2017 1:37 PM  
**To:** CPH Testimony  
**Subject:** Testimonies in STRONG OPPOSITION TO HB243, Proposed SD 1 and HB1498, Proposed SD1 being heard on Tuesday, March 21 at 9am in Rm. 229

To: The Committee on Commerce, Consumer Protection, and Health:

We are writing in STRONG OPPOSITION to the proposed SD1s for HB243 and HB1498.

HB243, proposed SD1 gutted the original language of the bill. The original language and intent of the bill needs to be included. Renters should not be allowed to be members of an AOA Board in which they have no ownership interest. Clearly renters and owners have different objectives.

Part III in HB1498, proposed SD1 needs to be deleted. We don't even know what "are not of a material adverse nature to condominium owners or do not imperil the viability of stability of the condominium association" means. This language is too subjective and will cause AOA's and its owners to spend tens of thousands of dollars on attorneys' fees trying to figure it out. The current threshold to amend condo docs is fine as is. Why is this Committee pushing for this? This language is clearly for special interest and a favor to one of your fellow Senators!

Mahalo,  
Dayton and Yaori Hinu

## CPH Testimony

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**From:** Mike Wong <mwong010@gmail.com>  
**Sent:** Monday, March 20, 2017 8:26 AM  
**To:** CPH Testimony  
**Subject:** HB1498, Proposed SD1: Strong OPPOSITION to bill being heard on Tuesday, 3/21/17 @ 9am in Rm. 229

Hello,

I am writing in STRONG OPPOSITION to the proposed SD1 for HB1498.

Declarations, bylaws, and other governing instruments are the "Constitution" for AOAO's. Amendments that "are not of a material adverse nature to condominium owners or do not imperil the viability or stability of the condominium association" is such a subjective statement that it would lead to constant challenges.

Lowering the threshold for amending declarations and bylaws diminishes their significance and importance. I have seen, first hand, small groups of overzealous owners who believe their opinion is the only one that matters. HB1498, Proposed SD1 would allow these owners to take advantage of a lowered threshold to change condominium documents, circumventing the high standards that were set to prevent such actions from occurring.

Imagine if we made it easier to ratify proposed Constitutional amendments. That could lead to chaos and instability. The same holds true for condominium Declarations and Bylaws, which set the foundation of our day to day lives, control common elements, etc.

These changes are NOT GOOD for condominium owners. This only benefits special interest groups.

Thank you for the opportunity to provide testimony in OPPOSITION to HB1498, Proposed SD1.

Mike Wong



## CPH Testimony

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**From:** Cliff Miyake <outlook\_51515CCC9F36222C@outlook.com> on behalf of Cliff Miyake <cliffmiyake@gmail.com>  
**Sent:** Monday, March 20, 2017 8:50 AM  
**To:** CPH Testimony  
**Subject:** Opposition to HB 1498 SD1

TESTIMONY IN STRONG OPPOSITION TO HB 1498, proposed SD1 Before the Committee on Commerce, Consumer Protection & Health on Tuesday, March 21, 2017 at 9a.m. in Conference Room 229

Aloha Chair Baker, Vice Chair Nishihara, and members of the Committee:

I respectfully submit testimony in strong opposition to HB1498, proposed SD1. I do not think changing the procedures to amend condominium declarations, bylaws and other governing instruments is needed or right at this time. Lowering the threshold to a majority of voters no matter how small the voting block will have terrible consequences for owners of condos intended or unintended. As proposed the language will allow a handful of owners though a minority to hijack the democratic process of a condo AOA. I can see many special interest groups with private agendas using this to run amok and introduce vote and pass actions for AOAs that will not be of the benefit to the majority of owners. Alternatively, if passed a small group of owners will introduce actions that another small group or the majority will not like. In response the disenfranchised group will introduce a counter action get it based and the cycle will begin anew. This will lead to chaos and create a situation where boards of AOAs will not be able to manage properties while values plummet. Please do not continue to try to move this language and bill forward.

Sincerely,  
Cliff Miyake  
Craigsides Unit Owner  
2101 Nuuanu Avenue 1405  
Honolulu, HI 96817

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