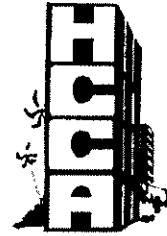




**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 26, 2017

Rep. Angus McKelvey, Chair
Rep. Linda Ichiyama, Vice-Chair
House Committee on Commerce & Consumer Protection

Re: Testimony in Support of
HB239, HD1 RELATING TO CONDOMINIUMS
Hearing: Tues., February 28, 2017, 2 p.m., Conf. Rm. #329

Chair McKelvey, Vice-Chair Ichiyama 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 strongly supports this HD1 and urges that you pass it out with 1 correction. At line 5 on page 3, clarifying language is necessary to indicate that "more than one box is checked" does not include the box requesting a copy of the Annual audit report.

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

A handwritten signature in black ink that reads "Jane Sugimura". The signature is fluid and cursive.

Jane Sugimura
President

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 10:05 PM
To: CPCtestimony
Cc: steveghi@gmail.com
Subject: Submitted testimony for HB239 on Feb 28, 2017 14:00PM

HB239

Submitted on: 2/27/2017

Testimony for CPC on Feb 28, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Glanstein	Hawaii State Association of Parliamentarians	Comments Only	No

Comments: Aloha: HB 239HD1 contains the following language in subsection (d). "The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section 514B-150. A proxy form that is returned with no box checked or more than one box checked, shall be counted for quorum purposes only." Because this language follows the provision that includes the check boxes for giving a proxy to a proxyholder, it COULD BE CONSTRUED to mean that if an owner checks a box giving the proxy to the Board as a whole, individual directors, or to an individual, and the box stating that he wants a copy of the audit, the proxy will be deemed quorum only because he checked two boxes. This is an unintended consequence. Suggest moving the audit requirement to a new subsection to ensure that subsection (d) does not apply to the box pertaining to the audit. Perhaps, make a new subsection (e) stating, "If it is a standard proxy form approved by the association, the proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section 514B-150."

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: Monday, February 27, 2017 1:10 PM
To: CPCtestimony
Cc: lila.mower@gmail.com
Subject: *Submitted testimony for HB239 on Feb 28, 2017 14:00PM*

HB239

Submitted on: 2/27/2017

Testimony for CPC on Feb 28, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower	Hui `Oia`i`o	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2017 10:52 PM
To: CPCtestimony
Cc: mrckima@gmail.com
Subject: *Submitted testimony for HB239 on Feb 28, 2017 14:00PM*

HB239

Submitted on: 2/23/2017

Testimony for CPC on Feb 28, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura	Individual	Support	No

Comments:

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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

Measure: HB 239 HD 1 Relating to Condominiums
Date and Time of Hearing: Tuesday, February 28, 2017 2:00 p.m.
Committee: Committee on Consumer Protection & Commerce

Aloha Representative McKelvey and members of your committee,

I am testifying in strong support of HB239 HD 1. Currently some Boards and Management Companies are allowing the proxies of Owners who have assigned their proxies to two different persons or entities as well as proxies given to no one to be used by board members to vote for their own re-election.

I believe you will be receiving examples of proxies from other testifiers that will show the proxies which previously had always been treated as spoiled ballots are now being used by board members to re-elect themselves. I do have copies of such proxies if others do not provide them to you.

The passage of HB 239 HD 1 will cure this problem by allowing these spoiled proxies to be used only for quorum purposes. Please approve HB 239 HD 1 as is.

Richard Port

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 11:34 AM
To: CPCtestimony
Cc: lourdes10@me.com
Subject: Submitted testimony for HB239 on Feb 28, 2017 14:00PM

HB239

Submitted on: 2/27/2017

Testimony for CPC on Feb 28, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Lourdes Scheibert	Individual	Support	No

Comments: Lourdes Scheibert, condominium owner supports HB239 RELATING TO CONDOMINIUMS. Clarifies that when a standard proxy form is returned with no boxes checked or more than one box checked, the proxy shall be counted for quorum purposes only. (HB239 HD1)

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 12:34 PM
To: CPCtestimony
Cc: dklynn2@comcast.net
Subject: *Submitted testimony for HB239 on Feb 28, 2017 14:00PM*

HB239

Submitted on: 2/27/2017

Testimony for CPC on Feb 28, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Diann Karin Lynn	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 8:11 AM
To: CPCtestimony
Cc: aanderson@alf-hawaii.com
Subject: Submitted testimony for HB239 on Feb 28, 2017 14:00PM

HB239

Submitted on: 2/28/2017

Testimony for CPC on Feb 28, 2017 14:00PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Comments Only	No

Comments: HB 239HD1 contains the following language in subsection (d). "The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section 514B-150. A proxy form that is returned with no box checked or more than one box checked, shall be counted for quorum purposes only." This language needs to be modified to clarify that this does not include the box for owners to check if they want to receive a copy of the audit report. Without this change, if an owner checks a box indicating to whom the proxy is to be given and the audit box, the proxy could be construed as a quorum only proxy, which is clearly not the intent of the bill. Such a result would have the unintended consequence of disenfranchising multiple owners. Sincerely, M. Anne Anderson

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Committee on Consumer Protection & Commerce
Hearing, Tuesday, Feb 28, 2017, 2:00 p.m.
Conference Room 329

LATE

TESTIMONY IN **OPPOSITION**
HB 239, H.D. 1, RELATING TO CONDOMINIUMS

Representative Angus L. K. McKelvey, Chair
Representative Linda Ichiyama, Vice Chair
Members of the Committee on Consumer Protection & Commerce

Aloha mai, kākou

Good afternoon. I am writing in opposition to HD 239, H.D. 1, specifically that change made to HRS 514B-123(d)(3) to delete the words "If it is" and insert "Be" a standard proxy form authorized by the association, and contain boxes wherein the owner has indicated that the proxy is given:....." While the effect of the change may seem to be minor, it is not.

As the "real" purpose of this legislation is to clarify how a proxy is to be counted when more than one box on a proxy form is checked, I suggest that the change noted above goes beyond this intent.

Currently, a homeowner who wishes to solicit proxies can create a proxy form that contains only the criteria listed in HRS 514B-123(d)(2). This criteria does not require that the proxy form contain a box for giving the proxy to the board as a whole, or to those directors present at the meeting. One of the problems with the standard proxy form used by AOAAs, as prepared by property managers, is that the form favors the Board of Directors, the end result being that the Board of Directors re-elect themselves.

However, if you are not inclined to leave HRS 514B-123(d)(3) as is in current law, then mandate that the order of listing the boxes as shown in the proposed change to HRS 514B-123(d)(3) be listed on the proxy form in the same order. Accordingly, HRS 514B-123(d)(3) would state: (3) (~~If it is~~) Be a standard proxy form authorized by the association, and contain boxes listed in the following order wherein the owner has indicated that the proxy is given:

- (A) For quorum purposes only;
- (B) To the individual whose name is printed on a line next to this box;
- (C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or
- (D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage.

Thank you for the opportunity to comment on this legislation.

MARILYN L. KHAN
Condominium Homeowner, Moana Pacific

LATE

Chair McKelvey, Vice Chair Nishiyama, and Members of the Committees,

My name is John Morris, I work as an attorney representing condominium and other homeowner associations and I am offering comments on this bill. This bill presents a worthwhile opportunity to combat one of the major problems in condominiums, owner apathy.

More specifically, this bill would be far more effective if it ALSO deleted the box that allows an owner to intentionally give the proxy for quorum only, as shown below. One of the biggest problems for condominiums is owner apathy – that many owners simply don't care and don't even bother to become involved in their condominium's governance and operation. Allowing the owners the option to intentionally give a proxy for quorum only completely undermines any effort to force owners to become involved on the issues that face their association. The lack of involvement by a majority of the owners, in turn, leads to some of the problems presented to the legislators year after year.

Moreover, allowing owners to intentionally give quorum only proxies often undermines the ability of those who do attend annual meetings to get anything done. Frequently, the minimum vote at an association meeting is a majority of all the owners – rather than just a majority of those present at the meeting – even for the election of directors. As a result, annual meetings are sometimes called to order and then can accomplish very little because 10% or 15% of the owners have intentionally given their proxies for quorum only. This means that the members present at the meeting cannot achieve the necessary 50.1% of all the owners to get anything done.

Therefore, making the change proposed by this bill and eliminating the ability of an owner to *intentionally* give a quorum only proxy would be far more effective.

“(d) A proxy, to be valid, shall:

(1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains;

(2) Contain at least the name of the association, the date of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given; ~~and~~

(3) If it is a standard proxy form authorized by the association, contain boxes wherein the owner has indicated that the proxy is given:

(A) For quorum purposes only;

(B) To the individual whose name is printed on a line next to this box;

(C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or

*(D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage.
The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section 514B150[-]; and
(4) If it is a standard proxy form authorized by the association and is returned with no box checked or more than one box checked, be deemed defective and be counted for quorum purposes only."*

Thank you for this opportunity to testify.