

# HB832 HD1

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Condominium Association Members; Board Meetings; Executive Sessions

Description: Allows association members who are not on the board to participate in any deliberation or discussion, except for executive sessions. Allows the condominium board members pursuant to board rules to limit the time provided to any member of the condominium association to participate in discussions to a reasonable time. Allows members of a condominium association to attend executive sessions with approval by a majority vote of the condominium board members, subject to certain limitations. (HB832 HD1)

Companion: SB627

Package: None

Current Referral: CPH

Introducer(s): KONG



**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 of  
HB832, HD1 RELATING TO CONDOMINIUMS  
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 HB832, HD1; however, it respectfully requests that the language in the Senate counterpart bill SB 627 SD1, Section 3 replace the language in this bill.

Thank you for the opportunity to testify on this matter.

  
Jane Sugimura  
President



**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: HB832 with Proposed 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.

**We are OPPOSED to HB832 in its current form.**

We suggest that the Committee amend HB832 as follows:

- (a) Include the wording from SB627 SD1 Sections 3 and 4 that amend HRS §514B-125 and §514B-126.
- (b) Correct an error in the proposed amendment to HRS §514B-125(b)(2) which incorrectly referenced “special meeting of the Association” instead of “special meeting of the “Board”.
- (c) Include the comments contained in the Senate Committee Report (SSCR714) referring to amendments noted in (a) and (b) above, but excluding the item described on page 3 herein.

The proposed wording follows on the next page:

**Proposed changes to HRS §514B-125.**

**[§514B-125] Board meetings.** (a) All meetings of the board, other than executive sessions, shall be open to all members of the association, and association members who are not on the board ~~may shall be permitted to participate~~ in any deliberation or discussion, other than executive sessions, ~~unless a majority of a quorum of the board votes otherwise pursuant to owner participation rules adopted by the board.~~

(b) ~~Following any election of board members by the association, the board may, at the board's next regular meeting or at a duly noticed special meeting, establish rules for owner participation in any deliberation or discussion at board meetings, other than executive sessions. A board that establishes such rules pursuant to this subsection:~~

~~(1) shall notify all owners of these rules; and~~  
~~(2) may amend these rules at any regular or duly called special meeting of the association; provided that all owners shall be notified of any adopted amendments.~~

(c) The board, ~~with the approval of a majority of a quorum of its members, by majority vote,~~ *board* may adjourn a meeting and reconvene in executive session to discuss and vote upon matters:

- (1) Concerning personnel;
- (2) Concerning litigation in which the association is or may become involved;
- (3) Necessary to protect the attorney-client privilege of the association; or
- (4) Necessary to protect the interests of the association while negotiating contracts, leases, and other commercial transactions.

The general nature of any business to be considered in executive session shall first be announced in open session. ~~During an executive session of the board, only members of the board, special invitees of the board, and such employees or staff members as the board or its rules may determine to be necessary are allowed to remain in the meeting.~~

(d) All board meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the board may require that the unit owner pay for the costs associated with the participation.

(e) The board shall meet at least once a year. Notice of all board meetings shall be posted by the managing agent, resident manager, or a member of the board, in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board. ~~The notice shall include a list of business items expected to be on the meeting agenda.~~

(f) A director shall not vote by proxy at board meetings.

(g) A director shall not vote at any board meeting on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

"Conflict of interest", as used in this subsection, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the association.

**Proposed change to HRS §514B-126.**

**[§514B-126] Board meetings; minutes.** (a) Minutes of meetings of the board shall include the recorded vote of each board member on all motions except motions voted on in executive session.

(b) Minutes of meetings of the board shall be approved no later than the second succeeding regular meeting.

(c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within ~~sixty-fourteen~~ days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

For the Committee's information, we specifically **excluded** a recommendation relating to the proposed amendment to HRS §514B-106 from SB627 SD1, Section 2. This proposal has proven to be very controversial, divisive, and has led to suggestions that board members refrain or resign from serving under such onerous conditions.

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

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 19, 2017 3:42 PM  
**To:** CPH Testimony  
**Cc:** richard.emery@associa.us  
**Subject:** Submitted testimony for HB832 on Mar 21, 2017 09:00AM

**HB832**

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	Support	Yes

Comments: Support but prefer the language in SB627.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 19, 2017 6:24 PM  
**To:** CPH Testimony  
**Cc:** lila.mower@gmail.com  
**Subject:** Submitted testimony for HB832 on Mar 21, 2017 09:00AM

**HB832**

Submitted on: 3/19/2017

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

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

Comments: Hui `Oia`i`o emphatically supports HB832 HD1 which clarifies HRS514B-125 and enforces owners' rights to participate in the self-governance of their associations. This measure, if adopted in its current form, ensures greater transparency, which--in turn--promotes greater confidence in the administration of associations, thereby alleviating one of the most common complaints of condo owners: unexplained, secretive, and/or unsatisfactory decisions which affect all owners. Misguided Board of Directors (BODs) in an effort to be expedient often attempt to curtail owners' ability to ask timely questions or offer expert advice. By doing so, these BODs create greater distrust in their decisions and actions. Additionally, draconian participation rules exasperate owners who may be more knowledgeable or experienced than BODs who may only have superficial education of the issue at hand and are forced to make unqualified decisions in the short time they give themselves. This is a formula for disaster which HB832 HD1 can ameliorate. Finally, HB832 HD1 eliminates the unfortunate phrase, "unless a majority of a quorum of the board votes otherwise" from HRS514B-125(a) which currently allows a board's minority to deny owners' participation. On a 9-member board, a minority of only 3 members (the "majority of the quorum") or on a 5-member board, a minority of only 2 members (the "majority of the quorum") can act as barriers to transparency. Mahalo. Lila Mower of Hui `Oia`i`o

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Lourdes Scheibert  
Royal Court Condominium  
920 Ward Ave  
Honolulu, Hawaii 96841

March 20, 2017

Hearing Date: Tuesday, March 21, 2017  
Time: 9:00 a. m.  
Place: Conference Room 229

Committee on Consumer Protection & Health  
The Senate, the 29th Legislature  
Regular Session of 2017

**RE: Testimony supporting HB832, HD1, Relating to Condominiums**

Allows association members who are not on the board to participate in any deliberation or discussion, except for executive sessions. Allows the condominium board members pursuant to board rules to limit the time provided to any member of the condominium association to participate in discussions to a reasonable time. Allows members of a condominium association to attend executive sessions with approval by a majority vote of the condominium board members, subject to certain limitations. (HB832 HD1)

Dear Chair Baker and Vice Chair Nishihara,

I am a condominium owner supporting HB832, HD1. I represent a number of owners in my condominium with concerns over transparency issues with our board.

As an example, I asked to participate in our last board meeting according to 514B-125 Board meetings. The President's final decision said I could only participate according to Robert's Rules. My President refused to recognize Hawaii State Condominium Law 514B. I asked that this decision by the board be entered into the minutes. I've yet to see the ratified minutes.

Another example, since 2010, we have asked to form committees concerning excessive deference of maintenance of the building. Our board meetings are scheduled every 2 months with six meetings a year. One meeting is the owner's annual meeting leaving five working meetings a year. We asked that a committee be formed with interested owners to work between board meetings to expedite decision making by the directors. We were unsuccessful.

Some of these discussions were held at the owner's forum before the meeting was called to order. These concerns were never noted on the minutes thereby not allowing information to reach all members of the Association.



In early 2011, I emailed Michael Hartley, CEO of Hawaiiana Management Company for a meeting concerning safety issues. Hartley agreed to meet and to include Ted Walkey for building safety. Shortly after, I received an email from Hartley canceling the meeting and referring me back to my property manager. In this email string, the property manager explains to Hartley that I am a problematic owner and director. Hawaiiana should not get involved. (Since 2016, this property manager has moved on)

During my time as a director from 2011 to 2013, I asked repeatedly for Hawaiiana's management agreement. I received the agreement on 9/5/2014. In this agreement Hawaiiana has the authority for maintenance and repair of the common areas and limited common areas. I then realized that the board had designated this duty to the management company. The management style of my condominium was to defer maintenance, fix when broken and supported and/or implemented by the majority directors.

This is one reason why I believe property managers who are assigned to the property should be individually licensed by the Real Estate Commission.

Another example, my leaking lanai ceiling was reported in 3/9/2009. In 2012, with adversity by management, I placed a complaint with the City and County building department only to receive a citation of violation of building code 3401.2 MAINTENANCE. This code refers to the as-built/original building. The same citation issued to Ala Moana Shopping Center for the rusted railing incident. Final repair was completed by industry standard on 5/2/2014 followed by final inspection by the building inspector.

*3401.2 Maintenance: Buildings and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices or safe guards which are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's designated agent shall be responsible for the maintenance of buildings and structures. To determine compliance with this subsection, the building official shall have the authority to require a building or structure to be reinspected. The requirements of this chapter shall not provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures.*

I agree with the report by the Committee on Consumer Protection & Commerce, Chair Angus McKelvey and Vice Chair Linda Ichiyama, Representatives Henry Aquino, Ken Ito, Calvin Say, Gregg Takayama, Chris Todd, Ryan Yamane and Beth Fukumoto as follows:

*The purpose of this measure is to provide protections for the interests of condominium owners and allow for greater scrutiny of meetings of a condominium's board of directors by providing association members an opportunity to participate in all deliberations and discussions at a meeting of the board, including an executive session meeting with approval of the board.*

I believe this bill is needed to give an owner an opportunity to participate in the management of their building and not to be afraid of retaliation or being bullied by management. If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.

Lourdes Scheibert  
Royal Court Condominium Owner

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 Support of HB 832 , H.D. 1**

Submitted by John White Sr.

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

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

I whole heartily support this bills reaffirmation of the homeowners right to participate in board meetings . The system of “ self-governance “ to be successful calls for increased participation not limited participation.

Mahalo,

John White Sr.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 19, 2017 2:46 PM  
**To:** CPH Testimony  
**Cc:** launahele@yahoo.com  
**Subject:** \*Submitted testimony for HB832 on Mar 21, 2017 09:00AM\*

**HB832**

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>
Benton	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 19, 2017 10:44 AM  
**To:** CPH Testimony  
**Cc:** mrckima@gmail.com  
**Subject:** Submitted testimony for HB832 on Mar 21, 2017 09:00AM

**HB832**

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>
Marcia Kimura	Individual	Support	No

Comments: Although current statutes already state owners' rights to participate in Board meetings, HB832 would underscore this. It must be remembered that Board members are elected not to carry out their own agendas, but to represent the needs and objectives of OWNERS. Furthermore, any objections by association Boards to owners' involvement in, and/or challenges to, Board actions should not result in attorneys' fees against individual owners!!

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18 Mar 2017

From: Diann K Lynn, 2333 Kapiolani Blvd., Honolulu 96826  
To: State of Hawaii, Senate, 29<sup>th</sup> Legislature  
Committee on Commerce, Consumer Protection, and Health,  
Senator Rosalyn H. Baker, Chair / Senator Clarence K. Nishihara, Vice Chair

Subj: HB832 HD1, RELATING TO CONDOMINIUMS

1. I am writing in support of the subject bill before you on 21 March regarding Condominiums, Condominium Association Members (owners), Board Meetings and Executive Sessions. The measure allows association members (condominium owners) who are not on the association board to participate in any deliberation or discussion, except for executive sessions, subject to reasonable time limitations as may be set by the condominium board members pursuant to board rules. It also allows members of a condominium association to attend executive sessions with approval by a majority vote of the condominium board members, subject to certain limitations.
2. Although State law HRS§514B-125(a) already gives association members these rights, my understanding is that a number of boards, managers, parliamentarians, and/or association attorneys would have owners believe that board meetings are held only for the board and insist that owners are "audience" only and may not participate (sometimes citing Robert's Rules of Order, which are actually superseded by State law). This bill will reinforce the association members' rights.
3. The number and size of condominiums in Hawaii means that a large percentage of the population is under the governance of homeowner associations and managing agents. Having strong State support of condominium owners' rights is critical. I thank you for your efforts to oversee and protect the same.

Sincerely

A handwritten signature in black ink, appearing to read 'DL', followed by a long horizontal line extending to the right.

DIANN K LYNN

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 18, 2017 1:38 PM  
**To:** CPH Testimony  
**Cc:** mkhan@hawaiiantel.net  
**Subject:** Submitted testimony for HB832 on Mar 21, 2017 09:00AM

**HB832**

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>
Marilyn Khan	Individual	Support	Yes

Comments: Strongly support HB832 HD1 that allows association members who are not on the board to participate in any deliberation or discussion, except for executive sessions. This kind of legislation would not be necessary if Boards were indeed respecting the homeowners and giving them the respect they deserve in participating especially in major decisions. Please pass HB832 HD1.

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Senator Roslyn H. Baker, Chair

Senator Clarence K. Nishihara, Vice Chair

Committee on Commerce, Consumer Protection, and Health

Tim Apicella

500 Lunalilo Home Road #26F

Honolulu, HI 96825

(808) 763-9592

Email: apicella58@msn.com

Tuesday, March 21, 2017 9:00 A.M.

**Support for H.B. No. 832 and Proposed Amendments, Relating to Condominiums**

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

My name is Tim Apicella. I wish to submit testimony as an individual. For the past 22 years, I have been both an owner of a condominium unit and board member, serving on different boards in the position of president, vice-president, director.

I support the spirit and intent of HB832. However, I request the Committee amend HB832 as follows:

1. Include the wording for SB627 SD1, Sections 3 and 4 which amend HRS 514B and 514B-126
2. Include the comments contained in the Senate Committee Report (SSCR714) referring to amendments noted in (1) above.
3. Remove the language related to the proposed amendment to HRS514B-106 from SB627 SD1 Section 2. The proposed amendment has proven to be controversial and divisive, and has led to opposition and comments that board members refrain or resign from serving under such onerous conditions.

Once the proposed amendment to HRS 514B-106 from SB627 SD1, Section 2 has been removed, I believe there is little in the proposed Bill that creates very much opposition. The Bill



is balanced approach to both owner and the board of directors. Owners will finally have an insurance that they will be able to have a brief moment during the open board meeting to ask a question or make a comment. Members of the board will have explicit guarantees to develop rules to limit owner participation and the ability to carry out the business of the association.

It is time that the proposed amendments HRS 514B -125 serve as the first step to begin the improvement of owner/board communications, and start the process to resolve years of homeowner grievances to the legislature.

I urge the committee to pass H.B. No. 832 with the proposed recommendation stated above. Thank you for this opportunity to testify.

**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 832, HD1

**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

I am testifying in support of HB 832, HD1 and request that it be approved without amendments.

This bill will allow association members, Owners, who are not members of the Board of Directors to participate in any discussion or deliberation at Board Meetings except executive sessions.

Many of the current complaints by Owners regarding their Boards will be eliminated by approval of this bill because Owners will be able to ask questions and express their opinions pertaining to agenda items.

This bill also allows members of a condominium association, on a very limited basis, to attend executive sessions with approval by a majority vote of the condominium Board of Directors.

It will allow an Owner to speak with their Boards regarding personal issues, e.g. regarding their payment plans, without other Owners listening in to their personal concerns.

However, If we broaden the issues for which some Owners are allowed to attend executive sessions, I am acutely aware that we will create a situation where 1) some Owners are favored members of the association and 2) other Owners become second class citizens in the condominium. Therefore, I urge your committee to approve HB 832, HD1 un-amended.

Richard Port