

# SB104

Measure Title: RELATING TO CONDOMINIUM GOVERNING INSTRUMENTS.  
Report Title: Condominiums; Governing Instruments; Declarations; Bylaws; Votes  
Description: Clarifies the procedures to amend condominium association declarations, bylaws, and other governing instruments.  
Companion: [HB897](#)  
Package: None  
Current Referral: CPH  
Introducer(s): K. RHOADS



**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)**

February 20, 2017

Honorable Senator Rosalyn H. Baker, Chair  
Honorable 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: Testimony in OPPOSITION to SB104; Hearing Date: February 23, 2017 at 9:30 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.

This testimony is presented in OPPOSITION to SB104.

The bill 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.

The bill fails to recognize that ownership changes occur during the one year written consent process and many boards and property managers want to ensure that they're over the threshold for amendment in case one or more of the written consents are not correct.

Reference is made to page 4, lines 8-13, page 8 line 18 through page 9 line 2, page 15, lines 7-11, page 18, lines 13-18, and page 21, lines 7-12.. These parts of the bill mix mailing with voting. Voting is done at a meeting, mailing is written consent.

**There are two dangerous parts of the bill.**

**FIRST:** 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.**

**SECOND:** During the Chapter 514B recodification, the percentage required for amending documents was increased to at least 67% of the common interest in order to comply with Fannie Mae requirements.<sup>1</sup>

Page 2 of the final draft states in relevant part,

**Real Estate Commission's Comment**

1. HRS §514A-11, modified, is the source of this section.
2. In 1982, the Legislature lowered the approval percentage required to amend condominium bylaws from 75% to 65% and established a 75% approval percentage for amending declarations. **FannieMae Section 601.03 requires at least 67% approval to make "amendments of a material nature" to project documents.** Among the "material amendments" listed are:
  - \* Voting rights;
  - \* Increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;

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<sup>1</sup> Internet Reference:

- \* Reductions in reserves for maintenance, repair, and replacement of common elements;
- \* Responsibility for maintenance and repairs;
- \* Reallocation of interests in the general or limited common elements, or rights to their use;
- \* Redefinition of any unit boundaries;
- \* Convertibility of units into common elements or vice versa;
- \* Expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;
- \* Hazard or fidelity insurance requirements;
- \* Imposition of any restrictions on the leasing of units;
- \* Imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;
- \* A decision by the owners' association of a project that consists of 50 or more units to establish self-management if professional management had been required previously by the project documents or by an eligible mortgage holder;
- \* Restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or
- \* Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

Therefore, the Commission used 67% as the base percentage for amending condominium governing documents (i.e., declaration, bylaws, and condominium map). (There are some exceptions, of course; e.g., in §\_\_\_: 2-17, 80% to remove from the provisions of this chapter.)

*[Emphasis added.]*

**Any reduction in the adoption percentage for any reason should be researched so that it doesn't adversely affect any Fannie Mae or other required minimums.**

**We respectfully ask that the Committee defer this bill.**

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



## Testimony in SUPPORT of SB 104 “RELATING TO CONDOMINIUM GOVERNING INSTRUMENTS”

The American Heart Association (AHA) supports SB 104. This bill would make it easier for condominium associations to enact policies when many owners are absentee who do not participate in bylaws votes and therefore make it difficult for condo associations to achieve the needed number of votes to enact policy amendments. Many condo associations have expressed interest in restricting smoking in their units, for both economic as well as health reasons, but have found it challenging to enact changes to policy because of the rigors of achieving the necessary number of votes by absentee owners who do not participate in voting.

The body of research on the dangers of smoking has long been acknowledged by health and science experts. However, over the last decade, research focus has been extended to the dangers of being exposed to secondhand smoke and that growing body of research has been eye-opening to the point that many have shown that breathing secondhand smoke is not only deadly, but that it can be more dangerous than smoking.

The California Environmental Protection Agency released in 2005 a report on the health effects of secondhand smoke based on a body of more than 1,000 research studies that went through four years of intense scientific, public and independent review. Among other things, the report found a causal link between secondhand smoke exposure and pre-term delivery, asthma induction in adults (the link between asthma induction in children had already been well established), a 70 percent increase in risk for breast cancer in younger, primarily premenopausal women, and altered vascular properties. Based on the report, California became the first state to declare secondhand smoke a toxic air pollutant. The decision by the California Air Resources Board put secondhand smoke in the same category as diesel exhaust, arsenic and benzene and blamed it for 4,000 deaths each year in California from lung cancer and heart disease alone.

Also in 2005, a study done at the University of California at San Francisco (UCSF) found that non-smokers exposed to secondhand smoke are negatively affected in a much higher dose to response ratio than are smokers. Another UCSF study released in November 2006, showed that Philip Morris Tobacco Company had done extensive animal research on secondhand smoke at a secret laboratory in Germany and found it to be more toxic to non-smokers than inhaled cigarette smoke is to a smoker. The three-year review of Philip Morris documents made public by the multi-state settlement with the tobacco industry showed that the company did experiments on rats, which are less sensitive to smoke than humans. The documents show that Philip Morris scientists learned that secondhand smoke is chemically different than mainstream smoke inhaled by a smoker. The smoke drifting off the lit end of a cigarette releases larger, more poisonous molecules than those inhaled at the filter end. The heating that takes place in the process of smoking a cigarette helps to break down some toxins. Secondhand smoke was found to be three times more toxic to tissue culture cells than mainstream smoke.

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The effects of secondhand smoke on the cardiovascular system are substantial and immediate. Within 5 minutes of exposure to secondhand smoke blood platelets become stickier. Within 15 minutes of exposure, scarring of the blood vessel walls occurs causing plaque that leads to atherosclerosis to adhere more easily. Within 30 minutes of exposure, the risk for heart attack doubles.

In 2008, the CDC asked the Institute of Medicine to convene a committee to assess the relationship between secondhand-smoke exposure and effects on the heart. The IOM reviewed 11 key international studies and concluded that data consistently demonstrates that secondhand-smoke exposure increases the risk of coronary heart disease and heart attacks and that smoking bans reduce heart attacks. Given the prevalence of heart attacks, and the resultant deaths, smoking bans save more than half a million lives each year in the U.S. alone. The savings, as measured in human lives, is undeniable.

Another study, published in the journal *Environmental Health Perspectives* in 2005 used the Third National Health and Nutrition Examination Survey (NHANES III), conducted from 1988 to 1994, to investigate the relationship between environmental tobacco smoke exposure and cognitive abilities among U.S. children and adolescents 6–16 years of age. The findings of that study confirmed previous research indicating an inverse relationship with ETS exposure and cognitive outcomes. The authors also provided new information indicating that ETS is neurotoxic at extremely low levels. Exposure to ETS in U.S. children therefore has substantial public health impact beyond asthma, otitis media (a group of inflammatory diseases of the middle ear), and other widely recognized adverse consequences. According to population estimates employing the appropriate sampling weights, they estimated that over 21.9 million American children are at risk for ETS-related reading deficits.

In addition, a new danger related to tobacco smoke emissions has emerged, a danger termed “third-hand smoke.” A Lawrence Berkeley National Laboratory (Berkeley Lab) study published in February 2010 found that nicotine in thirdhand smoke is a hazardous exposure resulting from cigarette smoke residue that accumulates in cars, homes, and other indoor spaces. Tobacco derived toxicants can react to form potent cancer causing compounds. Exposure to thirdhand smoke can occur through the skin, by breathing, and by ingestion long after smoke has cleared from a room. Therefore, children exposed to thirdhand smoke in an automobile or home can be exposed to cancer-causing compounds through either inhalation of dust or the contact of skin with carpet or clothes. The study's findings indicate that opening a window or deploying a fan to ventilate the enclosed space while a cigarette burns does not eliminate the hazard of third-hand smoke. ([https://en.wikipedia.org/wiki/Third-hand\\_smoke](https://en.wikipedia.org/wiki/Third-hand_smoke))

Lastly, there is no building in the world that has the technology to “air lock” each room or apartment unit from the rest of the building. As such, when one works or lives in a building, the air is circulated and shared by all within that same building. Buildings, like condominiums, need to be treated like public places where the toxic exposure of secondhand and thirdhand smoke can have much greater public health implications. As laws have been passed to protect the public from these toxic exposures in public places like restaurants and bars, similar protection is needed for those who live or work in buildings where air is shared with active smokers within.

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SB 104 would empower condominium associations with greater ability to enact policies protecting its tenants and owner occupants from exposure to secondhand and thirdhand smoke. The AHA supports its passage.

Respectfully submitted,

Don Weisman  
Hawaii Government Relations Director

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free of cardiovascular  
diseases and stroke."*

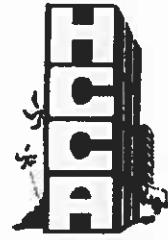
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**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**  
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 22, 2017

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

Re: Testimony in Opposition to  
SB104 RELATING TO CONDOMINIUM GOVERNING INSTRUMENTS  
Hearing: Thursday, February 23, 2017, 9:30 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 opposes this bill for the reasons set out in Steve Glanstein's testimony on behalf of Hawaii State Association of Parliamentarians, which comments and position are incorporated by reference in this testimony. We agree with Mr. Glanstein's statements that lowering the threshold for the vote required to change the condominium's governing documents could result in unintended consequences that would not be beneficial to condominium associations.

For the reasons set forth, HCCA respectfully requests that you defer action on this bill. If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.

Jane Sugimura  
President





Date: February 22, 2017

To: The Honorable Rosalyn H. Baker, Chair  
The Honorable Clarence K. Nishihara, Vice Chair  
Members of the House Committee on Commerce, Consumer Protection and Health

From: Trish La Chica, Policy and Advocacy Director, Hawai'i Public Health Institute

Re: **Support for SB104, Relating to Condominium Governing Instruments**

Hrg: February 23, 2017 at 9:30am at Capitol Room 229

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Thank you for the opportunity to submit testimony in **SUPPORT** of SB104 which clarifies the procedures to amend condominium association declarations, bylaws, and other governing instruments.

The Coalition for a Tobacco-Free Hawai'i (Coalition) is a program of the Hawai'i Public Health Institute (HIPHI) that is dedicated to reducing tobacco use through education, policy, and advocacy. With two decades of history in Hawai'i, the Coalition has led several campaigns on enacting smoke-free environments, including being the first state in the nation to prohibit the sale of tobacco and electronic smoking devices to purchasers under 21 years of age.

**Difficulty Passing Bylaws.**

The Coalition for a Tobacco-Free Hawaii has worked with numerous condominiums interested in passing a smoke-free bylaw amendment. The difficulty we have encountered in passing bylaw amendments in condominiums is low ballot returns. Currently, state law requires that 67 percent of all owners within a one-year timeframe must vote in favor of a bylaw in order for it to pass. Passing a bylaw amendment is often challenging, time-consuming, and expensive for condominiums. Often times a bylaw amendment fails because of poor ballots returns. This measure would allow condominiums to adopt a bylaw amendment as long 67 percent of the owners who returned ballots within the one-year time frame votes in favor of the amendment.

**SB104 helps to promote smoke-free environments.**

This measure would help condominiums to amend bylaws to include smoke-free policies. These policies help to protect unit owners from the high costs associated with the removal and damage caused by thirdhand smoke. Thirdhand smoke clings to walls, ceilings, carpets, draperies, and other furniture. They remain at high levels long after smoking has stopped and has shown to reemit back in the air as toxic compounds that can be inhaled by those that have moved into the home<sup>1</sup>. This measure also aims to protect nonsmoking neighbors from the health dangers of inhaling tobacco smoke. The Coalition supports any efforts to reduce secondhand and thirdhand smoke exposure in multi-unit dwellings.

**A majority of Hawai'i residents – 85%, prefer to buy or rent a house or apartment that is smoke-free.** An independent poll conducted by Ward Research Inc. for the Coalition, in November 2016 finds that 85% of registered Hawai'i voters would choose to buy or rent a smoke-free house or apartment.

**Condominium and apartment residents are suffering from secondhand smoke, a known carcinogen, with little recourse.**

The Coalition receives calls from residents who reside in multi-unit housing and who have asthma and other health issues affected by secondhand smoke exposure. The Coalition supports efforts that will encourage any multi-unit dwelling to go smoke-free. Through our efforts we have learned that all residents—regardless if they have asthma, COPD or other health issues—are impacted by the hazards of secondhand smoke.

Thank you for the opportunity to testify in **support** of SB104. We respectfully ask that you pass this measure out of committee.

Mahalo,



Trish La Chica  
Policy and Advocacy Director

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<sup>1</sup> Singer, B., Hodgson, A., Nazaroff, W. (2002). "Effect of absorption on exposures to organic gases from environmental tobacco smoke (ETS)" available at <http://eetd.lbl.gov/node/49332>

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 20, 2017 9:15 AM  
**To:** CPH Testimony  
**Cc:** richard.emery@associa.us  
**Subject:** Submitted testimony for SB104 on Feb 23, 2017 09:30AM

**SB104**

Submitted on: 2/20/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

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

Comments: Governing documents are like the association's Constitution. There is a high standard to amend. This Bill suggest that "no" votes by not replying to the approval request are not counted and that governing documents can be amended by 75% of simply those who reply. This would open many disputes and allow for many ways to cheat.

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:** Tuesday, February 21, 2017 8:02 PM  
**To:** CPH Testimony  
**Cc:** lila.mower@gmail.com  
**Subject:** Submitted testimony for SB104 on Feb 23, 2017 09:30AM

**SB104**

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM 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: Based on reviews of past association elections, unless an association (through its board) or the management company is required to prove that it/they attempted to reach all owners, it is conceivable that associations or management companies may attempt to influence election or voting results by directing the delivery of proxies or consent requests to those owners whose votes are in alignment with the association or management company and by avoiding notification to those owners who may not be in agreement with the board or management company.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, February 18, 2017 11:19 AM  
**To:** CPH Testimony  
**Cc:** john-a-morris@outlook.com  
**Subject:** Submitted testimony for SB104 on Feb 23, 2017 09:30AM

**SB104**

Submitted on: 2/18/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

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

Comments: This bill seems like a good idea to combat owner apathy but it could create complications. Fannie Mae, Freddie Mac, FHA, and VA all impose certain requirements for borrowers wishing to take advantage of their services. One of those requirements is that certain changes to the governing documents of a condominium can only be made with the approval of 67% (or 2/3) of the owners of the condominium. This provision appears to be intended to protect the interests of those four entities and avoid amendments from compromising their rights when they make or guarantee loans for condominiums. This bill proposes that far fewer than 67% of the owners could approve amendments to the governing documents which could, in turn, compromise the availability in Hawaii of loan services from those four entities. Therefore, before passing this bill, it might be worth checking to determine whether it could create that type of problem.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 21, 2017 8:56 AM  
**To:** CPH Testimony  
**Cc:** raetenno@gmail.com  
**Subject:** Submitted testimony for SB104 on Feb 23, 2017 09:30AM

**SB104**

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Raelene Tenno	Individual	Oppose	No

Comments: strongly oppose changing the voting procedures & % requirement to change governing docs!!!

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 20, 2017 8:10 PM  
**To:** CPH Testimony  
**Cc:** patriciablair@msn.com  
**Subject:** \*Submitted testimony for SB104 on Feb 23, 2017 09:30AM\*

**SB104**

Submitted on: 2/20/2017

Testimony for CPH on Feb 23, 2017 09:30AM 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:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 20, 2017 7:17 PM  
**To:** CPH Testimony  
**Cc:** lynnehi@aol.com  
**Subject:** Submitted testimony for SB104 on Feb 23, 2017 09:30AM

**SB104**

Submitted on: 2/20/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

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

Comments: This bill mirrors HB2248, which died in 2016. This incarnation too deserves a swift death. I am both a condo owner and board member. My association, Honolulu Tower, successfully amended our documents in 2012. While the process may seem onerous, it should be. It is our governing documents, just like the state and federal constitutions are those bodies' governing documents. It should not be easy to do. This bill will make condo governance a joke. It will allow a small minority to tyrannize the majority. Currently, we have up to a year to get the required number of votes. the voters are a moving group. If you vote and then sell your unit, the vote is cancelled and the new owner's opinion is what counts. The high standard is necessary as amendments can change the use of common elements such as swimming pools, parking stalls, gyms, pets, air conditioning, lobbies, smoking, parking stall assignments, etc. This can well affect the value of the entire condo association. People buy into a building because of what they are seeking, be it a pet friendly building, a no smoking building, a building which has a gym, or a pool, or a hot tub, or something else. This bill reduces the approval requirement after 365 days from 67% of all owners to 67% of those who voted. That is tyranny and ludicrous. This is significantly lower than the current requirement and much lower than what is required to adopt amendments to governmental constitutions. If enacted into law, a small group could change pet friendly to no pets or vice versa, no smoking to smoking or vice versa, build or remove a gym or pool or hot tub. Please kill this bill now. It amounts to a sanctioned taking. There are more important issues that need to be addressed. Lynne Matusow 60 N. Beretania, #1804 Honolulu, HI 96817 531-4260

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**TESTIMONY IN STRONG OPPOSITION TO SB 104**  
Before the Committee on Consumer Protection & Commerce  
on Thursday, February 23, 2017 at 9:30a.m.  
in Conference Room 229

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

I am Mike Wong and I am writing in **strong opposition to SB104**.

I am a current condominium owner and serve on my condominium board. SB104 proposes to lower the requirements for amending the Declarations and Bylaws, which ultimately 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. SB104 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.

SB104 is not good for condominium owners.

Thank you for the opportunity to provide testimony in Strong Opposition to SB104.

**Sandra-Ann Y.H. Wong**

*Attorney at Law, a Law Corporation*

*1050 Bishop Street, #514*

*Honolulu, Hawaii 96813*

**TESTIMONY IN STRONG OPPOSITION TO SB 104**  
Before the Committee on Consumer Protection & Commerce  
on Thursday, February 23, 2017 at 9:30a.m.  
in Conference Room 229

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

I am writing in **strong opposition to SB104**.

I have been a condominium owner and resident in Hawaii for the last 25 years and I have served both past and present on my condominium boards.

SB104 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. 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 owners 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.

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 the 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.

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 havoc 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.

Currently the statute has a procedures to amend condominium associations' documents that is fair to all owners. Thus, I strongly urge you to not fix, what is not broken, and hold SB104. I have spoken to many of neighbors and they share my strong opposition to SB104.

Thank you for the opportunity to provide testimony in **Strong Opposition to SB104**.

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

21 February 2017

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

Date: Thursday, February 23, 2017, 9:30 a.m., Room 229

**Re: SB 104 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.

I am writing in **STRONG OPPOSITION to SB 104** Relating to Condominium Governing Instruments regarding the Procedures to Amend Condominium Association Declarations, Bylaws, and other Governing Instruments.

SB104 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. Current 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 SB104.

T. J. Davies Jr., Volunteer  
Director, AOA 909 Kpiolani  
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)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 21, 2017 12:09 PM  
**To:** CPH Testimony  
**Cc:** cporter@hawaiiilegal.com  
**Subject:** \*Submitted testimony for SB104 on Feb 23, 2017 09:30AM\*

**SB104**

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christian Porter	Individual	Oppose	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 21, 2017 2:20 PM  
**To:** CPH Testimony  
**Cc:** launahele@yahoo.com  
**Subject:** \*Submitted testimony for SB104 on Feb 23, 2017 09:30AM\*

**SB104**

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

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

Comments:

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**Clifford M Miyake**  
2101 Nuuanu Avenue #1405  
Honolulu, HI 96817

**TESTIMONY IN STRONG OPPOSITION TO SB 104**  
Before the Committee on Consumer Protection & Commerce  
on Thursday, February 23, 2017 at 9:30a.m. in Conference Room 229

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

I am writing in **strong opposition to SB 104.**

I am a condominium owner and resident at the Craigside for the last 22 years and I have served on my condominium board. This past year I have served as Board President however, today I write you as a concerned owner resident.

SB 104 proposes to lower the threshold for amending condominium documents such as Declarations and Bylaws. Such a proposal if passed would lead to chaos at my condominium.

This past year we have seen a small group of owners with private agendas hijack the beginning of board meetings. They have split and polarized the membership of our AOA. The board has had to focus on maintaining control and order at meetings so that we can do productive work that is in the best interest of all the AOA versus a few special interests. If this bill is allowed to proceed it would legitimize and empower these individuals. It would allow a few to tyrannically control events to the detriment of the majority. This seems to go against the grain of democratic principles and what has made our state great.

Before we purchased our condominium unit we requested copies of the condominium documents for Craigside. After reading them my wife and I were satisfied that Craigside was where we wanted to live and make a home. We felt secure that these guiding bylaws and declarations could not be changed without a majority vote. Moving this bill forward would negate our sense of security and could jeopardize our peaceful enjoyment of our abode. It would allow a few to make living in our condominium complex unbearable. As such I request that you do not move this bill forward.

Thank you for the opportunity to provide testimony in Opposition to SB 104.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 21, 2017 10:51 PM  
**To:** CPH Testimony  
**Cc:** sunnymakaha@yahoo.com  
**Subject:** Submitted testimony for SB104 on Feb 23, 2017 09:30AM

**SB104**

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dale A. Head	Individual	Oppose	No

Comments: I oppose this bill does not foreclose on the possibility of the Board or Agent to target only specific owners they deem 'friendly' to the Board agenda.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 21, 2017 10:19 PM  
**To:** CPH Testimony  
**Cc:** ulu80812@gmail.com  
**Subject:** Submitted testimony for SB104 on Feb 23, 2017 09:30AM

**SB104**

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
amy y. kimura	Individual	Comments Only	No

Comments: I oppose this bill. I do not understand the need for this bill. It would allow a small clique to change the bylaws too easily and allow the clique to rule the association very undemocratically. It could do so to the clique's benefit (financial. quality of life, or perks) and to the detriment of the majority of owners or owner-occupants. If the change to 2/3 of those voting is adopted, it could then encourage proposed bylaw-change supporters to keep silent about a vote to owners likely to object or to question it and its effect on the majority of owners. This could allow 2/3 of as few as 5% of the owners to decide a major change in a bylaw. This could allow a small number of non-resident board members to completely lower the quality of life in the condo in order, say, to earn the highest return in a short period of time. Moreover, in many condos, since non-resident (live elsewhere on the island) and absentee (live out of state or off island) owners routinely give their proxies to the Board of Directors, this would allow the Board to make changes even if the majority of owner-occupants are opposed to the change. I have been a condo owner for decades, and my condo associations have been able to amend the bylaws with the currently required 2/3 vote of total owners. In my experience, bylaw change proposals have often been included with the annual meeting notice, thereby saving on the cost of the first mailout to all owners. One time it took several mailings by management before the required 2/3 could be met, an expense, but that expense had been weighed by the Board against the need for the bylaw change. The bylaws are, to me, like our city charter, state constitution, and national constitution. They are usually protective of individual rights and should not be as easily amended as regulations, ordinances, and laws. Their stability enables residents to plan their lives. They are not like House Rules, which can be changed by any board, often without notice to the owners and without any discussion. Thank you. amy y. kimura 1310 Heulu St., 1002 Honolulu, HI 96822 ph 531-2503

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I truly hope that SB 104 will pass.

I am an owner of a condo on the Big Island, the Keauhou Akahi Condominium .

Disappointingly, our condo could not get a bylaws amendment pass to ban smoking on lanais. Of those that voted, we only had 66.67% affirmative vote. We were told that we could not round up so there for the Amendment failed.

Had the vote been the percentage of those voting, the Amendment would have been 80%.

Unfortunately, my unit is next to a rental unit that the owner allows his tenants to smoke on his lanai as long as they closed all the doors and windows of his condo so that none of the smoke gets into his unit while they are smoking on his lanai.

The makai to muaka breezes push the cigarette smoke into my unit since the smoke has nowhere else to go. Recently he had a chain smoker in the unit that was so bad, my sister who was visiting, had asthma attacks so sever from the second-hand smoke, that we had to close up all our windows and leave our condo during the day and not return until after 10:00 at night. This smoker would chain smoke from 8 AM to 10:00 PM. This continued for a week.

The behavior 16.67% of the Pro-Smokers in our condo are jeopardizing the health of their neighbors and unreasonably interfering with the use and enjoyment of other units.

The health, enjoyment and wishes of 80% of those that care enough to vote are counting on it.

David Dockstetter

Keauhou Akahi 402

(580) 917-1684

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 22, 2017 7:29 AM  
**To:** CPH Testimony  
**Cc:** dneubert18@yahoo.com  
**Subject:** Submitted testimony for SB104 on Feb 23, 2017 09:30AM

**SB104**

Submitted on: 2/22/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diane Neubert	Individual	Support	No

Comments: We have been trying to amend our By-Laws for 4 years to have a non-smoking policy in place. In our latest election we got 32 affirmative votes out of the possible 48 and that was 66.666% and it was announced that the amendment had passed. That was contested, an attorney was hired and the ballot was overturned. There were only 8 "no" votes, but 8 owners did not return their ballots and they were counted as "no" votes. It makes good common sense to only count the ballots that are returned and use that as the basis for the percentage. If people don't care enough to return their ballot then they should not be a part of the equation. There are several people here who feel their health is being affected by second hand smoke and the majority of us do not want to be bothered by smoke, but a few people who don't care are preventing us from getting a good healthy policy in place. This bill is a perfect common sense approach, is very fair and I urge you to pass it. Thank you for your thoughtful consideration of this matter.

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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:** SB 104 Relating to Condominium Governing Instruments  
**Date and Time of Hearing:** 9:30 a.m. Thursday, February 23, 2017  
**Committee:** The Committee on Commerce, Consumer Protection & Health

Aloha Senator Baker and Members of your Committee,

I am testifying in opposition to SB 104. Changes to Associations' Declaration and By-Laws should be difficult as a protection to owners who purchased their condominium apartment units. If changes are needed, history has shown that owners will agree to the changes. Previously I have been able to obtain changes to By-Laws, but only if communication with owners is clear and complete.

I request that your committee defer SB 104.

Richard Port