

SB370

Measure Title:	RELATING TO CONDOMINIUM MANAGEMENT.
Report Title:	Condominium Governance; Real Property; Housing
Description:	Requires condominium boards to post board meeting agendas and make board meeting materials available to association members at least seven days prior to each meeting. Requires association members to be provided an opportunity to submit materials and present testimony about any item on the board meeting agenda. Requires board meeting minutes to include the recorded vote of each board member on all motions without exception. Requires boards to make approved minutes available to association members within seven calendar days. Reduces the number of days after the meeting by which the board must make available unapproved final drafts of the minutes of a meeting.
Companion:	<u>HB178</u>
Package:	None
Current Referral:	CPH
Introducer(s):	GALUTERIA, ESPERO, HARIMOTO, RUDERMAN, SHIMABUKURO, Baker, S. Chang, Dela Cruz, English, Gabbard, Green, Inouye, Kidani, Nishihara



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



February 22, 2017

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

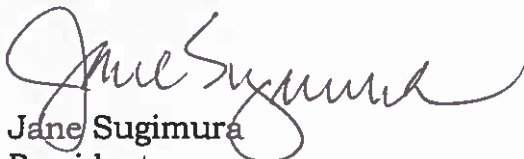
Re: Testimony in Opposition to
SB370 RELATING TO CONDOMINIUM MANAGEMENT
Hearing: Thursday, February 23, 2017, 9:30 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Nishihara, Chair Keith-Agaran and Vice-Chair Rhoads and
Members of the Joint-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 and incorporates by reference the comments and positions
of Steve Glanstein of the Hawaii State Association of Parliamentarians.

Thanks for allowing me 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**

February 20, 2017

Hon. Sen. Rosalyn H. Baker, Chair
Hon. Sen. 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 SB370; Hearing Date: February 14, 2016 at 2:00 p.m. in House conference room 329; 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 SB370.

It provides for unlimited participation by owners at board meetings. It ignores the reality that **board members, not owners** must take care of association business. In my experience, boards must strike a balance between owner participation and board decision making.

Board members have been removed or not re-elected when they have been non-responsive to owner questions. This happened as recently as last week when a board president refused to take questions immediately following his report.

The other extreme has also occurred with a 5 member board and 30 owners at a budget meeting. The budget couldn't get adopted on a timely basis due to the board's accommodation and the maintenance fees had to be adjusted for an 11 month period instead of an annual period, resulting in an increase.

Page 3, lines 12-13 require the board to, “(1) Post an agenda for each board meeting at least seven days prior to the meeting;”

It ignores the reality that agendas for many boards are not ready until the day before the meeting. The uncertain result is prospective nullification or delay of board action based upon an after the fact complaint that an agenda was late or an item was not on the agenda.

Page 3, line 14 through page 4, line 3 require the board to, “(2) Provide all association members with an opportunity to view all documents, reports, or proposals related to the meeting and those concerning any projects or policies that impact the living conditions or lifestyle of association members, including but not limited to changes in maintenance fees, contracts exceeding \$75,000, renovations, and changes in the design of the condominium structure, parking structure, landscape, and recreational areas, at the time that the agenda is made available to association members;”

It ignores the reality that proposals are not ready until the meeting or even the day before the meeting. The uncertain result is nullification or delay of board action based upon any documents received after the agenda is posted that arguably “impact the living conditions or lifestyle of association members.”

The use of the term, “impact the living conditions or lifestyle of association members” is subject to varying interpretation at great risk to an association. This makes it more difficult for non-paid volunteer boards to discharge their fiduciary duty to the association.

The only supported parts of this bill are on page 4, line 16 through page 5, line 2 which:

- (a) include the recorded vote of directors on all motions, and
- (b) mandate that approved board minutes be made available to association members within 7 calendar days of approval.

We ask that you defer SB370 or substantially correct it.

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. 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: Monday, February 20, 2017 9:40 AM
To: CPH Testimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for SB370 on Feb 23, 2017 09:30AM

SB370

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
Richard Emery	Associa	Oppose	Yes

Comments: The Board has been elected to make business decisions for the association. Often last minute information becomes available that is discussed at a meeting and delays can affect the safe operation of the project. The board meeting is a business meeting of the board. SB627 better addresses owner participation at a board meeting.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 8:20 PM
To: CPH Testimony
Cc: lila.mower@gmail.com
Subject: *Submitted testimony for SB370 on Feb 23, 2017 09:30AM*

SB370

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
Lila Mower	Hui `Oia`i`o	Support	No

Comments:

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My name is John Morris and I am submitting testimony in opposition to SB 370. The preamble to the bill notes that the board has broad authority. The board has that authority because the owners have given it authority through the governing documents. If the owners wanted to be involved in every aspect of condominium governance, they could easily amend their documents and take that authority away from the board.

Every decision would have to be approved by the membership, after a town hall meeting, and the governance of the association would almost certainly grind to a halt. Alternatively, very few of the owners would even show up to make decisions and little would happen because there would be insufficient owners to participate.

The owners don't make that change because they would rather do something else than act on behalf of their association. If that was not the case, the owners could run for the board themselves. Instead, this bill proposes that any owner who shows up at the meeting gets to act as a board member. Of course, if the owner in question did run for the board and was not elected, that raises a question of whether his or her fellow decided the owners in question should NOT represent them. This bill would overturn that type of decision.

Essentially, this bill proposes that after all the owners, at an annual meeting, have elected a board of directors to act on behalf of all the owners, the board will have to take advice from any owner who shows up at the meeting. Under this bill, that will have to happen no matter what because the bill takes away the board's ability to control its own meetings. For example, owners frequently show up at board meetings long after the board has reached the point of proceeding with the work. Even if the owner is telling board things that the board has already investigated and dealt with, the board will have to sit there and listen to the owner tell them something they already know.

(I was at a meeting a few weeks ago in which an owner stood up and said that no one had told the owners about the special assessment to replace the pipes. The president replied that if the owner had bothered to attend the board meeting, the board had been discussing issues for the last 12 months at every monthly meeting.)

Moreover, if 10 owners happen to show up because, for example, the board has decided to impose a large assessment to fund the replacement of pipes in the building or windows or something similar, the board will have to give each of those 10 owners a "reasonable" time to give their opinions and advice to the board. If the board gives each of the 10 owners two minutes, that will be 20 minutes of time spent listening. If there are three or four items on the agenda, that will extend the board's meeting by 60 to 80 minutes. Being on the board is hard enough without having to spend additional time at a board meeting simply listening to owners.

The legislature does not have a rule that obligates it to surrender control of committee meeting to members of the public. For example, at every decision-making hearing, the legislature specifically excludes testimony from those present, unless the legislature specifically decides it wishes to hear from a particular attendee. Therefore, it is unclear

why this bill proposes to take away from condominium boards that same ability to control their meetings.

Thank you for this opportunity to testify

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 20, 2017 5:49 PM
To: CPH Testimony
Cc: lynnehi@aol.com
Subject: Submitted testimony for SB370 on Feb 23, 2017 09:30AM

SB370

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: Please accept this as testimony in strong opposition. This will hamper the functioning of boards and the health of the association. Posting an agenda at least seven days in advance is unrealistic. Often we are unable to get proposals from contractors that far in advance. In fact, we sometimes get them day of the board meeting. Are you saying we should then wait a month to make a decision on awarding contracts regarding plumbing issues, leaks, electrical wiring, cable service, etc., etc., etc.? We have repeatedly been told that we should, in our fiduciary duties, get at least three proposals. My condo association lets non members speak on any matter before the board. We welcome their comments. But if 30 members come to speak on an issue (out of 396 units) we could well spend the entire meeting on one subject. Also, often times the material we get is marked confidential, for board members only. Board meetings have to be efficient. We cannot have meeting run for three, four, five, six hours. Quorum will be lost. This bill will kill associations. Also, executive session is supposed to be to discuss legal matters, personnel matters, and confidential materials. This is not something that should be disseminated to all owners. These fall within the prerogative of the board. Unlike members of the legislature who are paid a salary, association board members are VOLUNTEERS. We get no pay. We work for the good of our community. It appears that this bill was introduced by those who do not understand the complexity of association governance at the behest of people who are unable to get elected to their boards. I cannot imagine senators setting similar parameters for the conduct of their committee meetings and floor sessions. Why then impose it on your constituents. In fact, you are not subject to the sunshine law, which requires agendas six days in advance, yet you want us to unrealistically do this seven days in advance, when often we don't have backup material. Lynne Matusow, 60 N. Beretania, #1804, Honolulu, HI 96817, 531-4260

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 17, 2017 10:42 PM
To: CPH Testimony
Cc: mrckima@gmail.com
Subject: *Submitted testimony for SB370 on Feb 23, 2017 09:30AM*

SB370

Submitted on: 2/17/2017

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

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

Comments:

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Sent: Tuesday, February 21, 2017 12:00 PM
To: CPH Testimony
Cc: cporter@hawaiiilegal.com
Subject: Submitted testimony for SB370 on Feb 23, 2017 09:30AM

SB370

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
Christian Porter	Individual	Oppose	No

Comments: I submit this testimony in opposition as there are current laws that allow owners the opportunity to comment on motions before the Board. Owners should not be allowed access to proposed contracts and bids until such time that the contract is signed, since the information is subject to executive session, i.e., contract negotiations. Therefore, there is no need for this proposed Bill. Thank you for your consideration.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 11:04 PM
To: CPH Testimony
Cc: sunnymakaha@yahoo.com
Subject: Submitted testimony for SB370 on Feb 23, 2017 09:30AM

SB370

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
Dale A. Head	Individual	Support	No

Comments: I am in support of this bill. We had an amusing intrigue here at Makaha Surfside one time when a Security Guard posted a 3"X5" card on our bulletin board. He then took a picture of it and removed it. A person standing nearby asked him why, and he explained, "That was notice of a Board meeting, the picture is proof that it was posted". ;-p

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Cc: mrckima@gmail.com
Subject: *Submitted testimony for SB370 on Feb 23, 2017 09:30AM*

SB370

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
Marcia Kimura	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 5:56 PM
To: CPH Testimony
Cc: aanderson@alf-hawaii.com
Subject: Submitted testimony for SB370 on Feb 23, 2017 09:30AM

SB370

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
Anne Anderson	Individual	Oppose	Yes

Comments: S.B. 370 is a bad bill. Board meetings are for boards to conduct business, not for owners to conduct business. This bill interferes with the Board's ability to conduct business. Agendas are not always ready 7 days in advance of a meeting. A Board ought to be able to control its own agenda. Allowing owners to view all documents interferes with a Board's ability to conduct business. If the Board must share all of this information with owners, it will lose its ability to receive competitive bids from vendors because all bids would become public knowledge. Owners elect directors to represent them. This bill defeats the purpose of a board. The provision related to minutes would require the Board to record votes in executive session when that is not necessary because those minutes are not made available to owners. The requirement that unapproved drafts of minutes be available within 30 days is unreasonable. I strongly urge you to vote against this bill. Sincerely, Anne Anderson

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