

SB393

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Associations; Board of Directors; Mixed-use Projects; Elections

Description: Clarifies that the removal or replacement of a director elected by a class of unit owners shall be by a majority of only the members of that class. Specifies that for an election in a mixed-use condominium project where directors are elected by different classes of owners, an association may cast a vote or votes allocated to any nonresidential unit owned by the association where those eligible to vote in the election are limited to owners of one or more nonresidential units, including the nonresidential unit owned by the association.

Companion: [HB648](#)

Package: None

Current Referral: CPH

Introducer(s): BAKER, Espero, Nishihara



**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 SUPPORT of SB393; 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 SUPPORT of SB393.

It proposes to correct the flaw in the current law regarding the:

- (a) removal and replacement of directors elected solely by one class of condominium unit owners in mixed unit condominiums; and
- (b) voting of residential nonresidential units in a mixed use project which may become owned by the association.

Section 2 of the bill clarifies that a director elected by a specific group of unit owners may only be removed by that group. I've provided an example:

If a condominium has two towers, the bylaws might provide that the owners in each tower shall elect a certain number of directors, or the bylaws of a condominium consisting of both highrise and townhouse units might provide for a certain number of directors to be elected by the highrise unit owners and a certain number of directors to be elected by the townhouse unit owners.

It makes sense that only the owners who are eligible to elect a director may vote to remove that director.

Otherwise, if the owners of one group hold a greater percentage of the common interest, they could remove a director elected by the minority group and thereby deprive the minority group of its ability to elect a director of its choosing.

Section 3 of the bill adds an exception to the provision that provides that no vote allocated to a unit owned by a condominium association may be cast for the election or reelection of directors. There are several considerations:

- (a) **This is a very narrow exception and has no effect on residential owners with respect to the board.**
- (b) The exception will allow a condominium board to cast the vote allocated to a **non-residential unit** owned by the association in elections where the **only units eligible to vote are nonresidential units and the association owns one or more of those nonresidential units.**
- (c) If a condominium association is unable to fill a nonresidential position on the board due to the current statute, then the owners of the nonresidential units would be deprived of having a representative on the board. Additionally, a vacancy on the board will make it more difficult to achieve a quorum to conduct business.

The proposed legislation parallels similar principles already enumerated in the law for various entities:

- (a) Hawaii Business Corporations Act, HRS §414-198(b) states, “(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.”¹

¹http://www.capitol.hawaii.gov/hrscurrent/Vol08_Ch0401-0429/HRS0414/HRS_0414-0198.htm

- (b) Hawaii Nonprofit Corporations Act, HRS §414D-138(b) states, “(b) If a director is elected by a class, chapter, or other organizational unit, or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.”²

We ask that you approve SB393.

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

²http://www.capitol.hawaii.gov/hrscurrent/Vol08_Ch0401-0429/HRS0414D/HRS_0414D-0138.htm

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 20, 2017 9:18 AM
To: CPH Testimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for SB393 on Feb 23, 2017 09:30AM

SB393

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	Support	Yes

Comments: This is fair and logical policy for directors elected by a class of voters per the governing documents.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 8:11 PM
To: CPH Testimony
Cc: lila.mower@gmail.com
Subject: Submitted testimony for SB393 on Feb 23, 2017 09:30AM

SB393

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	Oppose	No

Comments: Hui `Oia`i`o OPPOSES this bill which puts more voting power in the hands of incumbent Boards and results in marginalized owners. In most association-governed communities, the Board already dominates their annual elections, sometimes with as much as 30%--and in some cases even more--of common interests assigned to the Board via proxies. This bill proposes to further inflate the Board's influence on their associations' elections, assuring incumbent candidates of probable re-election and depriving new candidates of equal opportunity. In the 2009 booklet, Condominium Property Regimes: Owner Rights and Responsibilities, produced by the Real Estate Commission of the Department of Commerce and Consumer Affairs, it says "In general, the "self-governance principles" under which a condominium association operates require board members and owners to understand that: (1) the owners' most important role is electing directors..." This proposal will comparatively minimize owners' "most important role" in condo governance. Then what participation do owners have in the governance of their associations but to pay the bills?

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ANDERSON LAHNE & FUJISAKI LLP
A Limited Liability Law Partnership

733 Bishop Street, Suite 2301
Honolulu, Hawai'i 96813
Telephone: (808) 536-8177
Facsimile: (808) 536-4977

Of Counsel:
Joyce Y. Neeley

M. Anne Anderson
Philip L. Lahne
Lance S. Fujisaki

Pamela J. Schell
Paul A. Ireland Koftinow
Glenn S. Horio

February 20, 2017

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health
Hawai'i State Capitol, Room 230
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Testimony in Support of S.B. No. 393 (Companion Bill H.B. No. 648)
Hearing Date: February 23, 2017, at 9:30 a.m., Conference Room 229
The Twenty-Ninth Legislature; Regular Session of 2017

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

Thank you for the opportunity to submit testimony in support of S.B. No. 393.

I am a partner in the law firm of Anderson Lahne & Fujisaki LLP A Limited Liability Law Partnership. I have represented condominium associations in Hawai'i for over thirty years. S.B. No. 393 is a much needed bill and will fix a flaw in the current law as it pertains to elections in mixed-use projects. It will also provide clarification regarding the group of owners that may vote to remove directors when directors are elected by a class of owners.

Currently, HRS §514B-123(c) provides that no votes allocated to a unit owned by a condominium association may be cast for the election or reelection of directors. This provision poses a problem for mixed use projects where directors are elected by different classes of owners. For example, in mixed use projects, containing both residential and commercial units, it is not uncommon for the board of directors to be comprised of directors elected by the residential unit owners and directors elected by the commercial unit owners. In some cases, a single commercial unit might be entitled to elect a director to serve on the Board. If the condominium association were to own that single commercial unit, then the association would need to cast the vote allocated to that unit to elect the director to represent that unit. The same would apply in instances where there are only a few commercial units and the association owns a majority of those units. HRS §514B-123(c) poses a problem in these instances. Accordingly, an exception needs to be made for votes cast for nonresidential units owned by an association to ensure that the elections may be held and directors may be elected. The proposed change also clarifies that the vote for the nonresidential unit(s) owned by the association may be cast by the association acting by and through its Board.

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health
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HRS §514B-110 allows for different classes of directors in mixed use projects. HRS§110(h) provides that those directors may be removed as provided in HRS §514B-106(f). HRS §514B-106(f) provides for the removal of directors by a majority of the owners. The proposed change to this section clarifies that the removal of a director elected by a class of members shall be by a majority of the common interest represented by that class. This is consistent with HRS § 414D-138(b) which provides that “[i]f a director is elected by a class, chapter, or other organizational unit, or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.” It is also consistent with HRS § 414-198(b) which provides: “[i]f a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.”

There may be some opposition to this bill because there was opposition to H.B. No. 648 which is a companion bill pending in the House. The bill passed out of the House Committee on Consumer Protection and Commerce with all votes in favor. I imagine that the same testifiers who opposed H.B. No. 648 may oppose S.B. No. 393. Accordingly, I would like to address the concerns that I believe those persons may raise.

It appears that the persons who opposed H.B. No. 648 and who will likely oppose S.B. No. 393 misunderstand the bill. The bill is not intended to dilute or minimize the right of owners to vote or to give the Board a weighted vote in the removal of directors as one testifier stated. As it pertains to HRS Section 514B-123(c), Section 3 of the bill is intended to add an exception to the provision that provides that no vote allocated to a unit owned by a condominium association may be cast for the election or reelection of directors. This is a very narrow exception and has no effect on directors elected by owners of residential units. The exception will allow a condominium board to cast the vote allocated to a **nonresidential unit** owned by the association in elections **where the only units eligible to vote are nonresidential units and the association owns one or more of those nonresidential units**. Without this change, condominium associations are left in a difficult position if the vote allocated to a unit owned by an association is necessary to elect a director. If a condominium association is unable to fill a nonresidential position on the board due to the current statute, then the owners of the nonresidential units would be deprived of having a representative on the board. Additionally, a vacancy on the board will make it more difficult to achieve a quorum to conduct business.

As to the issue of removals, S. B. No. 393 does not give a condominium board a weighted vote to remove directors. It simply provides that if a director is elected by a class of unit owners, then the director may be removed or replaced only by a vote of a majority of the common interest represented by that class. For example, if a condominium has two towers, the bylaws might provide that the owners in each tower shall elect a certain number of directors, or the bylaws of a condominium consisting of both highrise and townhouse units might provide for a certain number of directors to

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Senator Clarence K. Nishihara, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health
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be elected by the highrise unit owners and a certain number of directors to be elected by the townhouse unit owners. It makes sense that only the owners who are eligible to elect a director may vote to remove that director. Otherwise, if the owners of one group hold a greater percentage of the common interest, they could remove a director elected by the minority group and thereby deprive the minority group of its ability to elect a director of its choosing.

S.B. No. 393 is a good bill and introduced for a good purpose. I strongly support its adoption.

If you have any questions, I may be contacted at (808) 697-6003 or by email at: aanderson@alf-hawaii.com.

Sincerely,



M. Anne Anderson

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 12:06 PM
To: CPH Testimony
Cc: cporter@hawaiiilegal.com
Subject: *Submitted testimony for SB393 on Feb 23, 2017 09:30AM*

SB393

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	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 11:14 PM
To: CPH Testimony
Cc: sunnymakaha@yahoo.com
Subject: Submitted testimony for SB393 on Feb 23, 2017 09:30AM

SB393

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	Oppose	No

Comments: We already have, much too often, abuse of the category, 'Board as a whole'. This means, again too often, that when a property management company get the majority of Board members to do its bidding, allowing it to run the entire association, that they can use this model to remove any dissenting Board members who object to the Agent controlling the Board.

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