SB400

Measure Title:	RELATING TO PLANNED COMMUNITY ASSOCIATIONS.
Report Title:	Planned Community Associations; Common Interest Communities; Common Areas; Assessments
Description:	Permits portions of the common areas of a planned community association to be conveyed, subjected to a security interest, or dedicated to the appropriate county or to the State, if at least eighty per cent of the members of an association agree in writing to that action. Limits the ability of the board of directors to impose excessive regular assessments or special assessments, except in emergency situations, without the approval of a majority of the members of an association.
Companion:	
Package:	None
Current Referral:	CPH, WAM
Introducer(s):	BAKER, ESPERO, NISHIHARA, S. Chang, Galuteria

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 27, 2017 2:05 PM
To: CPH Testimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for SB400 on Jan 31, 2017 09:00AM

SB400
Submitted on: 1/27/2017
Testimony for CPH on Jan 31, 2017 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Oppose	No

Comments: I have no problems with the conveyance of common areas portion although practically speaking it imposssble to get 80% to do anything. Should be 67%. Boards have legal obligations to maintain the property. Lenders depend on a board to maintain the property. Such provisions will probably affect the ability to get mortgages or refinance the property. This requirement should be deleted. An explanation to owners is appropriate.

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TO: Senator Rosalyn H. Baker, Chair

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Dear Ms. Baker,

I am a volunteer board member and the President of the Mililani Pinnacle AOAO Board of Directors. I have been a director for more than 10 years since purchasing my unit at the Pinnacle while working for Castle & Cooke Properties in Marketing and Planning. My background is business (MBA in Finance/Planning) History (BA) and Law & Economics (MA/JD graduate coursework at the Universities of Michigan and Connecticut.) I have worked in middle and senior management positions for numerous Hawaii companies, including HMSA, Dole Foods/Castle & Cooke, Roberts Hawaii, Hawaiian Isles Enterprises, as well as operating as a consultant for a number of years in my own small business. I am a kama'aina having lived in Hawaii for almost 50 years excluding 10 years getting an education and experience on the Mainland. I would describe myself as a deliberate, thoughtful, analytical, critical thinker, who believes in weighing all sides of an issue before making any decision(s) or recommending any particular direction or approach.

I am writing to express my concern over a number of real estate governance and administration bills which have been introduced in the Hawaii State Legislature, seemingly intended to reduce or eliminate the ability of association Boards of Directors to do their administrative and fiduciary duties to the specific AOAOs they represent, and to convey those responsibilities and power to new entities and positions in the State of Hawaii government/ bureaucracy. This would severely undermine and damage the AOAOs, Boards and owners' rights of self-governance and the economic value of their properties. This seems to reflect the apparent belief that all condominium and homeowner association boards are bad people who are oppressing their members. I would like to assure you that is not true. The vast majority of board members are simply owners who are trying to do their best to manage and operate the condominium projects under their control for the benefit of their fellow owners. Good boards, like the one I am a member of, try to administer their operations like they are a small business, which in fact, they are. This sometimes causes disagreements amongst stakeholders. However, every effort is made to resolve these in a manner that is positive and solves the core problems affecting that AOAO/development.

I am also concerned that the bills have been introduced are apparently based on the complaints from a very small percentage of owners. It appears that no effort is made on the part of the legislature to independently investigate to determine the validity of those complaints. In most cases, when you receive a complaint, there is another side to the story you hear. Therefore, if you change the law without hearing the other side of the story, you will be acting based on incomplete information and almost certainly create more problems than you solve. Effecting this legislation will probably also result in declines in the value of the underlying properties as owners, investors, financial institutions, and the real estate industry will correctly determine that huge uncertainty has been injected into the condominium market. Financial markets abhor uncertainty (witness the national impact of current uncertainty regarding immigration and its' impact on business) and local and national players in this

market will act to reduce or eliminate it. That could be very painful for Hawaii condominium owners and the overall Hawaii economy. This could destroy or at least significantly undermine the net worth of many individuals as their homes are their largest single investment and often the core of their personal holdings built over a lifetime of work. Many Hawaii residents rely upon these homes to generate investment appreciation which can be liquidated and used to fund retirement.

On that basis, I urge the legislators to investigate carefully before passing bills, such as the "condominium czar" bill from 2016 (HB 1802, SB 2760, and SB 1007), which would undermine the self-governance concept that has been the basis of condominium and homeowner association governance since the very beginning. Otherwise, if something like a condominium czar is created, he or she (and the State of Hawaii) will quickly discover what most of the boards in the state have known for decades: managing and operating a condominium or other homeowner association is not nearly as simple as many people seem to believe.

For 2017, I will certainly do my best to monitor legislation and submit testimony that presents my point of view on that legislation as well as overall thoughts on risks, rewards and potential consequences. Even if I am not able to do that on a regular basis, I still urge you and the other legislators to carefully consider what you are doing before you act to "improve" the situation, not after.

Best Regards,

Wade Souza

President, Mililani Pinnacle AOAO

1/30/2017

Telephone: (808) 523-0702
January 31, 2017

SENATE COMMITTEE ON CONSUMER PROTECTION AND HEALTH
REGARDING SENATE BILL 400

Hearing Date:		TUESDAY, January 31, 2017
Time	:	9:00 a.m.
Place	:	Conference Room 229

Chair Baker, Vice Chair Nishihara, and Members of the Committees,

My name is John Morris and I work as an attorney representing condominium and other homeowner associations. I also spent three years as Real Estate Commission's first condominium specialists from 1988 to 1991. During that time, I was closely involved in the development of Hawaii's condominium reserves and budgeting law. I am testifying against SB400 because it has some serious flaws, as outlined below.

This bill seems to be based on a misunderstanding of how a non-condominium homeowner association in Hawaii manages and operates its property. In particular, the governing documents of virtually every association in Hawaii – condominium or non-condominium – gives the board of directors the responsibility and the obligation to properly maintain the association's common property. This bill would overturn that well-recognized, standard operating procedure.

Conveyance Provisions. With respect to the conveyance of property to government agencies, the declarations of many associations already provide a mechanism whereby the association may transfer property to a government agency, so it is not clear why this bill proposes to override that process. At a minimum, the bill should state that: "*Unless the existing declaration provides a different process*, [the provisions of the bill apply]."

Moreover, if the bill is based on a problem affecting a single homeowner association or a small group of homeowner associations, it is unclear why every homeowner association in the state should be forced to ignore existing conveyance provisions in its governing documents that the owners all agreed to when they purchased their homes. Instead, the association or associations with a problem should clean up their own governing documents or rely on this bill.

Proposed Fee Increase Limits. The proposed provisions limiting increases in assessments for non-condominium homeowner associations without owner approval could ultimately lead to serious deterioration of physical plant of the association because the owners refuse to approve a fee increase**. The real question is not whether the owners approve the expenditure but whether the work has to be done**.

Virtually every association in the state gives the board the responsibility for the repair and maintenance of the common property. That is because experience has proven that hundreds or even thousands of association members cannot be relied on to actively participate in the governance of the association without the whole process grinding to a halt. Often, high levels of apathy amongst association members make it difficult for boards to secure any type of significant owner approval, let alone a majority.

In other words, under this bill, if the owners refuse to approve the increase in assessments, the work will not be able to be done because the owners are the primary -- and sometimes the only -- source of funds for the association. It could be argued that it serves the owners right, but that would hardly be a consolation to the other owners who recognize the need for maintenance, repair, and replacement of the associations physical plant but do not comprise a majority of all owners.

Again, owner participation in the governance of their non-condominium association is often minimal or non-existent. Many owners are content to leave the process up to the board of directors and only show up to complain when the board, after months of careful analysis and research, has made a decision to proceed with a maintenance, repair, replacement project that will cost the owners money.

Even though those owners had the right and the opportunity to attend every board meeting at which the board discussed the issues, the majority of the owners often stay at home or engage in personal pursuits. They leave the board to grind through the laborious process of becoming fully informed on the issues before beginning the work. Then, the owners show up to complain.

Finally, the bill misunderstands the limitation stated in the condominium law on maintenance fee increases. The condominium law only imposes a requirement on the board to follow its **annual** budget, except in emergencies with owner approval. More specifically, a careful reading of the condominium law will show that the limitation on increasing the maintenance fees by more than 20 percent above the budget only applies "***during the fiscal year to which the budget relates***." (See section 514B-148(e).)

In other words, more than 25 years ago, when the condominium reserves law was adopted, the legislature at that time recognize that an absolute prohibition on year-to-year fee increases was not feasible and might have a detrimental effect on the management and operation of the average condominium association. As a result, the condominium law only imposes a "no surprises for a year" limit – i.e., states that once a board adopts a budget for a particular year, the board cannot exceed that budget by more than 20 percent during that particular year. In contrast, this bill proposes that there will be an absolute prohibition on exceeding the prior year's budget by more than 20 percent in a following year.

Finally, the relatively low level of association dues in the average NON-condominium association will only exacerbate the problem. For example, there are some non-condominium associations with dues of $100-$200 **a year**. Under this bill, unless a majority of the owners approve the increase, the board would not be able to increase association dues by more than five percent – $5 to $10 – without majority owner approval! If a significant expenditure must be made, this bill would certainly kill that expenditure without majority owner approval.

Thank you for this opportunity to testify.

John A. Morris

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 27, 2017 3:10 PM
To: CPH Testimony
Cc: kananik@hawaiianprop.com
Subject: *Submitted testimony for SB400 on Jan 31, 2017 09:00AM*

SB400
Submitted on: 1/27/2017
Testimony for CPH on Jan 31, 2017 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Kanani Kaopua	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 25, 2017 10:10 AM
To: CPH Testimony
Cc: mrckima@gmail.com
Subject: Submitted testimony for SB400 on Jan 31, 2017 09:00AM

SB400
Submitted on: 1/25/2017
Testimony for CPH on Jan 31, 2017 09:00AM in Conference Room 229

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

Comments: I am in favor of SB400 because so many associations have unfairly seized the opportunity to increase exponentially the maintenance fees based on the pretext of necessity of properly maintaining common elements which the city or state can better maintain.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2017 2:58 PM
To: CPH Testimony
Cc: funky808@gmail.com
Subject: Submitted testimony for SB400 on Jan 31, 2017 09:00AM

SB400
Submitted on: 1/29/2017
Testimony for CPH on Jan 31, 2017 09:00AM in Conference Room 229

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

Comments: me I oppose SB400 due to the unreasonable constraints it will place on Planned Community Associations to manage their own land. The threshold of 80% (as currently written in SB400) is too high considering how difficult it is to get Members to respond to Association matters. My Association current has 51%, which is workable since a quorum can be met while at the same time a majority of Members must be in agreement to make changes.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2017 7:41 PM
To: CPH Testimony
Cc: cdgcdg@aol.com
Subject: Submitted testimony for SB400 on Jan 31, 2017 09:00AM

SB400
Submitted on: 1/29/2017
Testimony for CPH on Jan 31, 2017 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
C Gaughen	Individual	Oppose	No

Comments: RE: “Portions of the common areas of an association may be conveyed, subject to a security interest, or dedicated to the appropriate county or to the State, if at least eighty per cent of the members of an association agree in writing to that action.” I do NOT support this bill as it is currently written. I live in a large Association of home owners. Our Declaration of Protective Covenants allows for a change to the covenants by agreement of a majority of all owners (51+ %). The common areas of our Association fall under the Covenants. This Association is supported by the Members (not Federal, State or County taxes). Financial obligations fall upon the Members. The Members should not be overly restricted on how they decide among themselves to handle the financial aspect of their common areas, including the decisions to convey lots or not. It is already a very difficult process to secure 51% of the votes of all owners. Increasing that to 80% could negatively affect the financial stability of the Association by in essence making the decision-making process towards change too burdensome to achieve.

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