

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

March 25, 2017

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Representative Chris Todd, Acting Vice Chair  
House Committee on Consumer Protection and Commerce  
Hawai'i State Capitol  
415 South Beretania Street  
Honolulu, Hawai'i 96813

RE: Testimony Related to S.B. No. 627, S.D.1  
Hearing Date: March 28, 2017, at 2:00 p.m., Conference Room 329  
The Twenty-Ninth Legislature; Regular Session of 2017

Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

Thank you for the opportunity to submit testimony related to S.B. No. 627, S.D.1.

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.

**A. Section 2 of the Bill.**

Section 2 of the bill provides that "any violation of any mandatory provision" of Chapter 514B by a "board or its officers and members" shall be deemed a "*per se*" violation of the fiduciary duty owed under HRS Section 514B-106(a). This is an extremely bad provision for several reasons.

First, Section 2 fails to identify the provisions in HRS Chapter 514B that the legislature considers to be "mandatory" provisions. For a bill that greatly increases the exposure of directors and officers to liability, this lack of clarity is unreasonable. The lack of clarity will also undoubtedly be the cause of much litigation.

Second, not only is Section 2 lacking in specificity, but it provides for a "*per se*" violation of the fiduciary duty owed under HRS § 514B-106(a). This change represents a drastic shift from the current standard of care applicable to actions of directors and officers of condominium associations. Currently, HRS § 514B-106(a) provides that in the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under HRS Chapter 414D. HRS §

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Representative Chris Todd, Acting Vice Chair  
House Committee on Consumer Protection and Commerce  
March 25, 2017  
Page 2

414D-149(a) provides:

§ 414D-149. General standards for directors

(a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director reasonably believes to be in the best interests of the corporation.

A very similar standard of conduct for officers is found in HRS § 414D-155(a).<sup>1</sup>

HRS § 414D-149(d) provides:

(d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

Under HRS § 414D-149(d), a director will not be held liable if he/she acts in good faith, with the same care an ordinarily prudent person in like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best in interests of the association. HRS § 414D-155(d) includes an almost identical provision for officers. These sections are very similar

---

<sup>1</sup> HRS § 414D-155(a) provides:

(a) An officer with discretionary authority shall discharge the officer's duties under that authority:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

to the business judgment test.<sup>2</sup>

The new language added to HRS § 514B-106(a) provides that any violation of a mandatory provision of HRS Chapter 514B is a “*per se*” violation of fiduciary duty. “*Per se*” can mean “of, in, or by itself; standing alone, without reference to additional facts;” or “as a matter of law.”<sup>3</sup> Owners who become involved in disputes with their associations will undoubtedly argue that the “*per se*” language means that a violation of a (yet to be identified) mandatory provision of HRS Chapter 514B is an automatic breach of fiduciary duty without regard to any other factors, such as whether the director was acting in good faith, in a manner that he/she believed to be in the association’s best interest, or in the same manner that a reasonably prudent person would act in like circumstances. Furthermore, HRS § 414D-149(b)<sup>4</sup> expressly provides that directors are entitled to rely upon the advice of experts, such as lawyers and public accountants and HRS § 414D-155(b)<sup>5</sup> contains similar

---

<sup>2</sup> See *Fujimoto v. Au*, 95 Hawai‘i 116, 148-149, 19 P.3d 699, 731-732 (Hawai‘i 2001) (“[t]he directors’ conduct meets the ‘business judgment’ test when, in making a business decision, the directors have acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company.”).

<sup>3</sup> See “Per Se,” Black’s Law Dictionary, Tenth Edition (2014)

<sup>4</sup> HRS § 414D-149(b) provides:

(b) In discharging the director’s duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person’s professional or expert competence; or
- (3) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

<sup>5</sup> HRS § 414D-155(b) provides:

(b) In discharging an officer’s duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Representative Chris Todd, Acting Vice Chair  
House Committee on Consumer Protection and Commerce  
March 25, 2017  
Page 4

language related to officers. HRS §§ 414D-149(d) and 414D-155(d) provide protection to directors and officers who rely upon the advice of legal counsel and experts. However, the new “*per se* violation” language found in Section 2 contains no language affording protection to directors and officers who act in reliance upon legal or expert advice.

HRS § 414D-149(f) provides:

(f) Any person who serves as a director to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person’s performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the person was grossly negligent in the performance of, or failure to perform, such duties. For purposes of this section, remuneration does not include payment of reasonable expenses and indemnification or insurance for actions as a director as allowed by sections 414D-159 to 414D-167.

Section 2 of S.B. 627 will also deprive directors of the protection afforded by this section.

The proposed change to HRS Section 514B-106(a), if adopted, will undoubtedly make it difficult for condominium associations to find persons who are willing to serve on their boards of directors because it is not likely that very many people will be willing to serve if they can no longer rely upon the reasonable and long-standing protections afforded by HRS §§ 414D-149 and 414D-155 and the business judgment rule. While the proponents of the change to HRS § 514B-106(a) may argue that directors and officers carry insurance that should protect them from personal liability, the truth of the matter is that insurance companies are known for carving out exclusions from coverage in their policies. If Section 2 of this bill becomes law, it is highly foreseeable that insurance companies will quickly carve out exclusions for “*per se* violations” in their policies, leaving directors and officers without insurance protection.

Finally, the second sentence of HRS § 514B-106(a) provides that directors and officers, not the board as an entity, owe a fiduciary duty to the association. Yet, notwithstanding that the board, as an entity, does not owe a fiduciary duty, the new language found in Section 2 of the bill provides for a *per se* violation of fiduciary duty by a board. Because there can be no breach of duty where no duty exists,

- 
- (1) One or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented; or
  - (2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person’s professional or expert competence.

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Representative Chris Todd, Acting Vice Chair  
House Committee on Consumer Protection and Commerce  
March 25, 2017  
Page 5

at the very least, the reference to the board must be deleted in the new language proposed in Section 2.

I would note that Section 2 contains the same language that this Committee deleted from Section 3 of S.B. 306. Section 2 should be deleted from S.B. 627 for the same reasons.

For the above reasons, I strongly urge the committee to strike Section 2 in its entirety.

**B. Section 3.**

Section 3 of the bill contains an error. The reference a duly noticed special meeting of the “association” in the revised HRS Section 514B-125(b)(2) should be to a duly noticed special meeting of the “board.”

**C. Section 4.**

Section 4 of SB 627 requires that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and not practical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and review them (or at least had a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows:

(c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixtyfourty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Representative Chris Todd, Acting Vice Chair  
House Committee on Consumer Protection and Commerce  
March 25, 2017  
Page 6

If you have any questions, please feel free to contact me. I may be contacted by phone at (808) 697-6003 or by email at [aanderson@alf-hawaii.com](mailto:aanderson@alf-hawaii.com).

Sincerely,

A handwritten signature in black ink, appearing to be 'M. Anne Anderson', written over a horizontal line.

M. Anne Anderson

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 26, 2017 7:08 PM  
**To:** CPCtestimony  
**Cc:** richard.emery@associa.us  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/26/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Richard Emery       | Associa             | Support                   | Yes                       |

Comments: We support SB626 but request the amendments provided by HCCA, Jane Sugimura, be incorporated into the Bill.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 11:05 AM  
**To:** CPCtestimony  
**Cc:** chester@associahawaii.com  
**Subject:** \*Submitted testimony for SB627 on Mar 28, 2017 14:00PM\*

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Chester Amodo       | Associa Hawaii      | Oppose                    | No                        |

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)





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



March 25, 2017

Rep. Roy Takumi, Chair  
Rep. Linda Ichiyama, Vice-Chair  
House Committee on Consumer Protection & Commerce

Re: Testimony in Support (w/comments) of SB617 SD1  
RELATING TO CONDOMINIUMS  
Hearing: Tuesday, March 28, 2017, 2 p.m., Conf. Rm. #329

Chair Takumi, Vice-Chair Ichiyama and Members of the Committee:

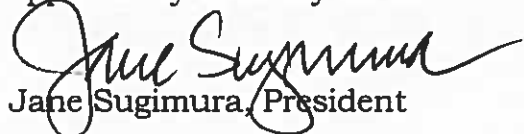
I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA). This organization represents the interests of condominium and community association members.

HCAAO agrees with the amendments to Section 3 (i.e., clarifies owners participation in board meetings and adds a requirement that the notice of board meetings include a list of business items expected to be on the agenda) and Section 4 (i.e., provides that unapproved draft minutes of a board meeting will be available within 14 days) of the bill and urges that those provisions pass out unamended.

However, HCAAO suggests the following amendments to Section 2 at page 3-4, beginning on line 12 at page 3, i.e., limit the sanction to mandatory provisions of HRS 514B-154, 161 and 162; allow the safe-harbor provision to apply to any board member who chooses to comply with those provisions within 45 days of the initial violation; and add an automatic 1-year sunset provision as follows:

“Any violation of mandatory provisions of HRS 514B-154 (production of documents requested by owners), HRS 514B-161 (mediation) and HRS 514B-162 (arbitration) shall be deemed to be a violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by voting against board action deemed to be violation or by choosing to comply with the mandatory provision within 45 days of the initial violation. This amendment will automatically sunset on June 30, 2018”.

If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.

  
Jane Sugimura, President

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 26, 2017 8:38 PM  
**To:** CPCtestimony  
**Cc:** alohaaclay@hawaii.rr.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/26/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Alice Clay          | Hui Malama O Hale   | Support                   | Yes                       |

Comments: Very strongly support SB627 SD1 which is needed for association members to speak and participate during a board meeting.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 8:38 AM  
**To:** CPCtestimony  
**Cc:** lila.mower@gmail.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Lila Mower          | Hui `Oia`i`o        | Support                   | No                        |

Comments: SUPPORT WITH COMMENT that, as amended, HRS514B-125(a) may still allow rules set by association boards to circumvent the intent of this measure which is to permit members of the association to participate in board meetings.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 25, 2017 2:19 PM  
**To:** CPCtestimony  
**Cc:** launahele@yahoo.com  
**Subject:** \*Submitted testimony for SB627 on Mar 28, 2017 14:00PM\*

**SB627**

Submitted on: 3/25/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Benton              | Individual          | Support                   | No                        |

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 10:00 AM  
**To:** CPCtestimony  
**Cc:** bonnielau1668@gmail.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Bonnie Lau          | Individual          | Oppose                    | No                        |

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I strongly oppose Sections 2 and 4 of SB 627, SD 1. If I have known there is this kind of measure coming, I would NEVER volunteer to join our Association's Board let alone I was elected. SECTIOM 2. I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627. SECTION 4. I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Thank you.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 25, 2017 9:40 PM  
**To:** CPCtestimony  
**Cc:** bradhair8888@gmail.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/25/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Bradford Lee Hair   | Individual          | Oppose                    | No                        |

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I oppose Sections 2 and 4 of SB 627, SD 1. SECTION 2. I strongly oppose the language in Section 2, which is the same language that this Committee struck from SB 306 after receiving strong opposition from numerous testifiers. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 2 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board of directors, director, or officer (collectively, "board members") a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members will be needlessly exposed to liability. Also, parties who file suit against board members will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. If Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to serve if they can be held liable per se, without any regard to whether they acted in good faith, in a manner that they reasonably believed to be in best interest of their association, and in the same manner a reasonably prudent person would have acted in like circumstances. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will impede the ability of associations to function. I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627. SECTION 4. I oppose Section 4 which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and not practical. Some boards meet once a month while many meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and

review them will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows: (c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

I oppose Sections 2 and 4 of SB 627, SD 1.

**SECTION 2.** I strongly oppose the language in Section 2, which is the same language that this Committee struck from SB 306 after receiving strong opposition from numerous testifiers. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 2 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board of directors, director, or officer (collectively, "board members") a "*per se* violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members will be needlessly exposed to liability. Also, parties who file suit against board members will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. If Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to serve if they can be held liable *per se*, without any regard to whether they acted in good faith, in a manner that they reasonably believed to be in best interest of their association, and in the same manner a reasonably prudent person would have acted in like circumstances. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will impede the ability of associations to function. I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627.

**SECTION 4.** I oppose Section 4 which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and not practical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and review them (or at least had a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows:

(c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 12:26 PM  
**To:** CPCtestimony  
**Cc:** office@makahavalleytowers.org  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| Submitted By      | Organization | Testifier Position | Present at Hearing |
|-------------------|--------------|--------------------|--------------------|
| Joanna L. Miranda | Individual   | Oppose             | No                 |

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I oppose Sections 2 and 4 of SB 627, SD 1. SECTION 2. I strongly oppose the language in Section 2, which is the same language that this Committee struck from SB 306 after receiving strong opposition from numerous testifiers. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 2 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board of directors, director, or officer (collectively, "board members") a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members will be needlessly exposed to liability. Also, parties who file suit against board members will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. If Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to serve if they can be held liable per se, without any regard to whether they acted in good faith, in a manner that they reasonably believed to be in best interest of their association, and in the same manner a reasonably prudent person would have acted in like circumstances. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will impede the ability of associations to function. I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627. SECTION 4. I oppose Section 4 which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and not practical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and

review them (or at least had a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows: (c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 3:10 PM  
**To:** CPCtestimony  
**Cc:** jtoa@hawaii.rr.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| John Toalson        | Individual          | Oppose                    | No                        |

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I oppose Sections 2 and 4 of SB 627, SD 1. SECTION 2. I strongly oppose the language in Section 2, which is the same language that this Committee struck from SB 306 after receiving strong opposition from numerous testifiers. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 2 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board of directors, director, or officer (collectively, "board members") a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members will be needlessly exposed to liability. Also, parties who file suit against board members will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. If Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to serve if they can be held liable per se, without any regard to whether they acted in good faith, in a manner that they reasonably believed to be in best interest of their association, and in the same manner a reasonably prudent person would have acted in like circumstances. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will impede the ability of associations to function. I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627. SECTION 4. I oppose Section 4 which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and not practical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and

review them (or at least had a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows: (c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 25, 2017 11:18 PM  
**To:** CPCtestimony  
**Cc:** jterashima@gmail.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/25/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Joyce Baker         | Individual          | Oppose                    | No                        |

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I oppose Sections 2 and 4 of SB 627, SD 1. SECTION 2. I strongly oppose the language in Section 2, which is the same language that this Committee struck from SB 306 after receiving strong opposition from numerous testifiers. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 2 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board of directors, director, or officer (collectively, "board members") a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members will be needlessly exposed to liability. Also, parties who file suit against board members will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. If Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to serve if they can be held liable per se, without any regard to whether they acted in good faith, in a manner that they reasonably believed to be in the best interest of their association, and in the same manner a reasonably prudent person would have acted in like circumstances. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will impede the ability of associations to function. I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627. SECTION 4. I oppose Section 4, which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and not practical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and

review them (or at least had a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows: (c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 10:59 AM  
**To:** CPCtestimony  
**Cc:** sdscepe@yahoo.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| Submitted By        | Organization | Testifier Position | Present at Hearing |
|---------------------|--------------|--------------------|--------------------|
| Katherine Stringham | Individual   | Oppose             | No                 |

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I oppose Sections 2 and 4 of SB 627, SD 1. SECTION 2. I strongly oppose the language in Section 2, which is the same language that this Committee struck from SB 306 after receiving strong opposition from numerous testifiers. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 2 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board of directors, director, or officer (collectively, "board members") a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members will be needlessly exposed to liability. Also, parties who file suit against board members will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. If Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to serve if they can be held liable per se, without any regard to whether they acted in good faith, in a manner that they reasonably believed to be in best interest of their association, and in the same manner a reasonably prudent person would have acted in like circumstances. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will impede the ability of associations to function. I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627. SECTION 4. I oppose Section 4 which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and not practical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and

review them (or at least had a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows: (c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



March 27, 2017

Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and other Committee Members:

On behalf of the Royal Vista AOA at 1022 Prospect Street, Honolulu, thank you for the opportunity to provide testimony on SB 627, SD1 - this testimony is to oppose Sections 2 and 4 of SB 627, SD 1:

**SECTION 2. We strongly oppose the language in Section 2, which is the same language that this Committee *already* struck from SB 306 after receiving strong opposition from numerous testifiers.**

In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and with their association's project documents. It is our belief that existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. We oppose Section 2 of this measure because it seeks to make:

**“any violation of any mandatory provision” of HRS Chapter 514B by a board of directors, director, or officer (collectively, “board members”) a “per se violation” of the fiduciary duty owed to the association under HRS Section 514B-106(a).**

Under this measure, board members will be needlessly exposed to liability. Also, parties who file suit against board members will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. If Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to serve if they can be held liable per se, without any regard to whether they acted in good faith, in a manner that they reasonably believed to be in best interest of their association, and/or in the same manner a reasonably prudent person would have acted in like circumstances. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will impede the ability of associations to function.

**We oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627.**

SECTION 4. We oppose Section 4 which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much unreasonably short and not practical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release

draft minutes before the board has had a chance to meet and review them (or at least have a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability.

**For this reason, we oppose the proposed change in Section 4.**

If the time period for making unapproved drafts must be changed, it should be changed to no fewer than 45 days after a meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date and the copy is clearly marked "DRAFT". Suggested language for HRS Section 514B-126(c) is as follows:

(c) Minutes of all meetings of the board shall be available after approval, or unapproved final drafts of the minutes of a meeting shall be available in DRAFT form within forty-five days after the meeting if the approved minutes are not available by that date; minutes of any executive session will be withheld from publication as it would defeat the lawful purpose of the executive session.

Thank you,

Kathleen Delahanty, President

Royal Vista AOA

1022 Prospect St.

Honolulu, HI 96822

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 1:13 PM  
**To:** CPCtestimony  
**Cc:** lfujisaki@alf-hawaii.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Lance S. Fujisaki   | Individual          | Oppose                    | No                        |

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I oppose Sections 2 and 4 of SB 627, SD 1. SECTION 2. I strongly oppose the language in Section 2, which is the same language that this Committee struck from SB 306 after receiving strong opposition from numerous testifiers. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 2 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board of directors, director, or officer (collectively, "board members") a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members will be needlessly exposed to liability. Also, parties who file suit against board members will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. If Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to serve if they can be held liable per se, without any regard to whether they acted in good faith, in a manner that they reasonably believed to be in the best interest of their association, and in the same manner a reasonably prudent person would have acted in like circumstances. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will impede the ability of associations to function. I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627. SECTION 4. I oppose Section 4 which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and not practical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and

review them (or at least had a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows: (c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

I oppose Sections 2 and 4 of SB 627, SD 1.

**SECTION 2.** I strongly oppose the language in Section 2, which is the same language that this Committee struck from SB 306 after receiving strong opposition from numerous testifiers. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 2 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board of directors, director, or officer (collectively, "board members") a "*per se* violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members will be needlessly exposed to liability. Also, parties who file suit against board members will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. If Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to serve if they can be held liable *per se*, without any regard to whether they acted in good faith, in a manner that they reasonably believed to be in best interest of their association, and in the same manner a reasonably prudent person would have acted in like circumstances. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will impede the ability of associations to function. I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627.

**SECTION 4.** I oppose Section 4 which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and not practical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and review them (or at least had a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows:

(c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

Lisbeth Lofvenholm  
469 Ena Road, Unit 2511  
Honolulu, HI 96815

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 2:29 PM  
**To:** CPCtestimony  
**Cc:** latchley@frontiernet.net  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Lonnie Atchley      | Individual          | Oppose                    | No                        |

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I oppose Sections 2 and 4 of SB 627, SD 1. SECTION 2. I strongly oppose the language in Section 2, which is the same language that this Committee struck from SB 306 after receiving strong opposition from numerous testifiers. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 2 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board of directors, director, or officer (collectively, "board members") a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members will be needlessly exposed to liability. Also, parties who file suit against board members will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. If Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to serve if they can be held liable per se, without any regard to whether they acted in good faith, in a manner that they reasonably believed to be in best interest of their association, and in the same manner a reasonably prudent person would have acted in like circumstances. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will impede the ability of associations to function. I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627. SECTION 4. I oppose Section 4 which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and not practical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and

review them (or at least had a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows: (c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 4:19 PM  
**To:** CPCtestimony  
**Cc:** lourdes10@me.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Lourdes Scheibert   | Individual          | Support                   | No                        |

Comments: I'm a condominium owner and support SB627 Thank-you Lourdes Scheibert

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 26, 2017 12:45 PM  
**To:** CPCtestimony  
**Cc:** lynnehi@aol.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/26/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| lynne matusow       | Individual          | Oppose                    | No                        |

Comments: I am a condo owner, board member, and officer. I previously submitted testimony asking that Section 2 be deleted. That testimony stands. I now am addressing Section 4. Having draft minutes available within 14 days of a board meeting is impractical. My board meets the first Monday of the month. If that day is a holiday, the meeting is held a week later. Often, board members have issues with draft minutes, finding errors, omissions, etc. At times, we are still correcting minutes at the board meeting. My board is inclusive. Once the minutes are approved they are posted on the association website, usually the next day. But to have draft minutes available for all to see in 14 days, when they are still being corrected, could well have owners relying on false material. I would prefer the current language, 60 days remain. That would also help boards who do not meet monthly, who cancel meetings during the year end holidays, etc. Lynne Matusow

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 25, 2017 12:34 PM  
**To:** CPCtestimony  
**Cc:** lynnehi@aol.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/25/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| lynne matusow       | Individual          | Oppose                    | No                        |

Comments: I am a condo owner and board member. I ask you to strike Section 2 from the bill. Board members and officers are volunteers. We rely on the advice of professionals, including property management firms and our attorneys. This provision would result in higher insurance premiums, if we can find companies willing to underwrite directors and officers liability coverage, the resignation of board members, and a shrinking pool of owners willing to serve on the board. This "per se" violation will increase the exposure of directors and officers to liability. It will also invite costly litigation from parties who could point to any violation of Chapter 514B as a basis to sue individual board members. All boards (condos and other boards) have problem members, but this is not a solution, it is a tsunami. Every organization has rogues. But there are ways to counter their impulses which do not entail the horrors of Section 2. Please strike Section 2. lynne matusow, 60 n. beretania, #1804, honolulu, hi 96817 531-4260

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 11:03 AM  
**To:** CPCtestimony  
**Cc:** mkhan@hawaiiantel.net  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Marilyn Khan        | Individual          | Support                   | Yes                       |

Comments: Support SB627HD1, however, recommend that HRS Section 514B-125, Section 3 be further amended to require that the Board of Directors hold a meeting with homeowners to receive testimony on the proposed rules for owner participation in any deliberation or discussion at board meetings, other than executive sessions BEFORE such rules are adopted. Affording homeowners the opportunity to testify in support, opposition, or amendment to the proposed rules should result in better acceptance of the rules by homeowners. Thus, amend HRS Section 514B-125(b) to read, "Following any election of board members by the association, the board may, at the board's next regular meeting or at a duly noticed special meeting, establish rules for owner participation in any deliberation or discussion at board meetings, other than executive session. However, Homeowners will be given an opportunity to testify in support or opposition to such rules, or offer amendments, for consideration by the Board of Directors prior to its adoption of the rules. A board that adopts such rules pursuant to this section: (1) Shall notify all owners of these rules; and (2) May amend these rules at any regular or duly noticed special meeting of the association after consideration of homeowner comments of such amendments; and will provide that all owners shall be notified of any adopted amendments.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 12:27 PM  
**To:** CPCtestimony  
**Cc:** mark@mckellar-law.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Mark McKellar       | Individual          | Oppose                    | No                        |

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I strongly oppose Section 2 of SB 627, SD 1 ("Section 2"). Typically, owners serve as board members voluntarily, and do their very best to perform their duties pursuant to the law and their association's governing documents. The law as it currently exists, sufficiently protects associations against boards that breach their fiduciary duty. Making any violation of any mandatory provision of Chapter 514B of the Hawaii Revised Statutes, a per se violation of the fiduciary duty owed by a board member, as Section 2 proposes to do, is entirely unnecessary, and will not substantially benefit associations. To the contrary, enacting Section 2 will likely scare many prospective board members and make it extremely difficult for associations to fill vacancies on their boards. Without an effective board of directors, associations will be unable to manage their projects. This is the likely consequence for many Hawaii associations if Section 2 is enacted, and therefore, I respectfully submit that Section 2 should be stricken from SB 627, SD 1. I also oppose Section 4 of SB 627, SD 1 ("Section 4"), which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and impractical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners, before most boards have the opportunity to meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and review them will likely result in the distribution of minutes with errors that could mislead owners and prospective purchasers and expose associations to liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows: c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any

executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 2:26 PM  
**To:** CPCtestimony  
**Cc:** miketnmaxc@msn.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| Submitted By     | Organization | Testifier Position | Present at Hearing |
|------------------|--------------|--------------------|--------------------|
| Michael Targgart | Individual   | Oppose             | No                 |

Comments: Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members: I oppose Sections 2 and 4 of SB 627, SD 1. SECTION 2. I strongly oppose the language in Section 2, which is the same language that this Committee struck from SB 306 after receiving strong opposition from numerous testifiers. In most associations, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association's project documents. I believe existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. I oppose Section 2 of this measure because it seeks to make "any violation of any mandatory provision" of HRS Chapter 514B by a board of directors, director, or officer (collectively, "board members") a "per se violation" of the fiduciary duty owed to the association under HRS Section 514B-106(a). Under this measure, board members will be needlessly exposed to liability. Also, parties who file suit against board members will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. If Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to serve if they can be held liable per se, without any regard to whether they acted in good faith, in a manner that they reasonably believed to be in best interest of their association, and in the same manner a reasonably prudent person would have acted in like circumstances. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will impede the ability of associations to function. I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627. SECTION 4. I oppose Section 4 which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and not practical. Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and

review them (or at least had a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability. For this reason, I oppose the change in Section 4. If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows: (c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

Dear Chair Takumi, Vice Chair Ichiyama, Acting Vice Chair Todd, and Committee Members:

My name is Pamela Schell. I am an attorney who represents condominium owners' associations and I oppose Sections 2 and 4 of SB 627, SD 1. Section 2 of the measure attaches "per se" liability of fiduciary duty for Board violations of mandatory provisions of HRS, Section 54B-106. Board members serve their association in a voluntary capacity and many associations already have difficulty filling seats on their Board of Directors. Owners who do serve on a Board understand their duty to serve the association and its members and do their very best to comply with applicable law and their association's project documents. Fiduciary duty is one of the first concepts new Board members learn and existing law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. Section 2 of SB 627, SD 1 makes any violation of mandatory provisions of HRS Section 514B-106 by board member or officers a "per se violation" of the fiduciary duty owed to the association under that section. The vast majority of Board members do their very best to not violate Condominium Property Law. The danger of applying an absolute, *per se*, liability standard for failure to comply with *any mandatory* violation will seriously discourage members from serving on Boards of Directors. Additionally, the *per se* liability fails to consider attendant circumstances, such as the efforts the Board members undertake to become fully informed as they seek and rely on the opinions or guidance of professionals and/or experts to act in the most reasonable manner they can to benefit the association. Under this measure, board members and associations will be needlessly exposed to liability. It will make current and potential future board members reluctant to serve, so it will be harder for associations to comply with the administration requirements of their governing documents if no one wants to take the time and effort, or incur the risk, to govern.

Further, Section 4 of SB 627, SD 1 imposes an unreasonable burden on the associations as it requires that minutes be hastily prepared, and will require that unapproved final drafts be made available to owners even before the board has had a chance to review them at the next meeting. Draft minutes may contain errors that may mislead owners and prospective purchasers and expose associations to liability. Associations should not be placed in this position. Instead the law should more reasonably provide that minutes be made available within 7 calendar days after approval and that unapproved drafts shall be made available within 45 days after a meeting.

Sections 2 and 4 of this measure will adversely affect most condominium associations in Hawaii. They should therefore not be enacted in the present form.



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 9:43 AM  
**To:** CPCtestimony  
**Cc:** pirelandkoftinow@alf-hawaii.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| Submitted By             | Organization | Testifier Position | Present at Hearing |
|--------------------------|--------------|--------------------|--------------------|
| Paul A. Ireland Koftinow | Individual   | Oppose             | Yes                |

Comments: My name is Paul A. Ireland Koftinow. Thank you for this opportunity to provide testimony in OPPOSITION to SB 627, SD 1. As an attorney, my practice is focused on the representation of condominium associations and planned community associations in Hawaii. I have also been a speaker at seminars on the topics of fiduciary duties and common law defenses to covenant enforcement. I have the following concerns regarding SB 627, SD1, and I join in the testimony of Anne Anderson. As you may recall, your Committee deleted the same exact language from SB 306, SD 1, and it should do the same with Section 2 of this measure. Section 2 of this measure should be deleted entirely because it seeks to create an unjust expansion of liability for condominium association board members who are uncompensated and serve their condominium associations in a voluntary capacity. Lawmakers traditionally recognize that association board members who serve without compensation are protected from personal liability except in cases of gross negligence. (See, e.g., HRS Section 414D-149(f)). Also, existing laws governing duties and obligations of association board members are sufficient to protect associations' interests (as set forth in Chapter 414D, many associations' governing documents, and as further discussed by Anne Anderson in her testimony). Section 2, however, will impose an unprecedented burden on all association board members and it will be bad policy because it will likely cause many board members to resign or will create an atmosphere where board members are afraid to make any decisions for fear of "per se" liability. Section 2 of this measure will therefore adversely affect almost every condominium association in Hawaii, and it will impede the ability of owners to efficiently manage their associations. For these reasons, Section 2 should be stricken from this measure.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 27, 2017 12:16 PM  
**To:** CPCtestimony  
**Cc:** psnerney@yahoo.com  
**Subject:** Submitted testimony for SB627 on Mar 28, 2017 14:00PM

**SB627**

Submitted on: 3/27/2017

Testimony for CPC on Mar 28, 2017 14:00PM in Conference Room 329

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Philip Nerney       | Individual          | Comments Only             | No                        |

Comments: The committee should only consider this bill if the following language is omitted: "Any violation of any mandatory provision of this chapter by a board or its officers and members shall be deemed a per se violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by voting against, or otherwise creating a written record of disagreement with, a board action that is in violation of a mandatory provision of this chapter and having that board member's vote recorded in the minutes of a regular or special meeting of the board within forty-five days of the occurrence of the violation." That language would harm associations and render them vulnerable to unreasonable critique and attack.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**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 627, SD 1 Relating to Condominiums  
**Date and Time of Hearing:** 2:00 p.m. Tuesday, March 28, 2017  
**Committee:** The Committee on Consumer Protection & Commerce

Aloha Representative Takumi and Members of your Committee,

I am testifying in support of SB 627, SD 1, but I am requesting amendments to Section 2 of the bill as proposed by Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners.

The suggested amendments are proposed to insure compliance with three sections of HRS 514B, including HRS 514B-154, the production of documents requested by Owners; HRS 514B 161 Mediation of Disputes within Condominiums; and HRS 514B 162 Arbitration of Disputes if Mediation fails. Violations by Boards of these three Sections of HRS 514B, our Hawaii Condominium Law, have been all too frequent and there are currently very limited enforcement provisions for these violations.

Thank for this opportunity to testify in support of SB 627, SD 1 with the amendments proposed by Jane Sugimura. This bill is extremely important and I urge your committee to keep this bill alive for conference committee consideration.

Richard Port

Committee on Consumer Protection, and Commerce

Representative Roy M. Takumi, Chair

Representative Linda Ichiyama, Vice Chair

Tim Apicella

500 Lunalilo Home Road #26F

Honolulu, HI 96825

(808) 763-9592

Email: apicella58@msn.com

Tuesday, March 28, 2017 2:00 P.M.

**Support for S.B. No. 627. SD1 Relating to Condominiums**

Aloha Chair Takumi, Vice-Chair Ichiyama, and Committee members:

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

I support SB627.SD1. I believe there is little in the proposed SB627 SD1 that creates very much opposition. This Bill addresses a balanced approach to both owner and the board of directors. Owners will finally have insurance that they will be able to have a brief moment during the open board meeting to ask a question or make a comment. Members of the board will have explicit guarantees to develop rules to limit owner participation and the ability to carry out the business of the association.

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

I urge the committee to pass S.B. No. 627. Thank you for this opportunity to testify.



Dante K. Carpenter  
3054 Ala Poha Place, #401  
Honolulu, HI 96818

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Subject: SB 627, SD1 – RELATING TO CONDOMINIUMS

Dear Chair Reps. Roy Takumi; Vice Chair Linda Ichiyama, Acting Vice Chair Chris Todd, and Committee Members:

Good Afternoon. My name is Dante K. Carpenter. I am an elected member of the BOD of the AOA Country Club Village, Phase 2, located in Moanalua – Salt Lake area of O’ahu. I have previously served as the Past BOD President for over 20 years. This condominium Complex is comprised of Two (2) – 21 Story Buildings with 469 2 & 3 BR Apartments.

**I am strongly opposed to Sections 2 and 4 of SB 627, SD 1, for the following reasons.**

**SECTION 2.** The language in Section 2, is the same language that this Committee struck from SB 306 after receiving strong opposition from numerous testifiers! In my experience, board members serve their association in a voluntary capacity and they do their very best to comply with applicable law and their association’s project documents.

1. Existing Hawai’i law governing a fiduciary duty owed by board members is clear and sufficient to protect the interest of associations. Section 2 of this measure because seeks to make “any violation of any mandatory provision” of HRS Chapter 514B by a board of directors, director, or officer (collectively, “board members”) a “*per se* violation” of the fiduciary duty owed to the association under HRS Section 514B-106(a). With this language, board members will be needlessly exposed to liability!
2. Also, parties who may sue board members and associations will have little or no regard for how prudent and responsible a board member has acted because the provisions in Section 2 do not account for this. Further, if Section 2 is adopted, current board members will be reluctant to continue to serve and it will be difficult to find replacements because very few owners will want to be held liable *per se*, without any regard to whether they acted in good faith.
3. Section 2 of this measure will adversely affect almost every condominium association in Hawaii, and will complicate and impede the ability of homeowners associations to function. **I oppose any effort to take away or minimize the protections afforded to board members under HRS Chapters 514B and 414D and strongly urge the committee to strike Section 2 of SB 627.**

Testimony of Dante K. Carpenter

March 26, 2017

Page 2

**SECTION 4.** I further oppose Section 4, which would require that unapproved drafts of minutes of board meetings be made available to owners within fourteen days after a board meeting. This time period is much too short and impractical! Most boards meet once a month while others meet quarterly or less often. If the change reflected in Section 4 becomes law, associations will be required to make unapproved drafts of minutes available to owners even before most boards can meet and review them. Requiring condominium associations to release draft minutes before the board has had a chance to meet and review them (or at least had a reasonable opportunity to review them for boards that meet less often than once a month) will undoubtedly result in the distribution of minutes with errors which could mislead owners and prospective purchasers on issues and expose associations to potential liability! **For this reason, I oppose the change in Section 4.**

Note: If the time period for making unapproved drafts must be changed, it should be changed to no less than 45 days after the meeting and it should be clarified that unapproved drafts only need to be provided if the approved minutes are not available by that date. Suggested language for HRS Section 514B-126(c) is as follows:

*(c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within forty-five days after the meeting if the approved minutes are not available by that date; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.*

Thank you for your attention to this urgent matter

Respectfully submitted,

/s/ Dante K. Carpenter