

SB627

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Condominium Association Members; Board Meetings; Executive Sessions

Description: Allows association members who are not on the board to participate in any deliberation or discussion, except for executive sessions. Allows the condominium board members pursuant to board rules to limit the time provided to any member of the condominium association to participate in deliberation. Allows members of a condominium association to attend executive sessions with approval by a majority vote of the condominium board members, subject to certain limitations.

Companion: [HB832](#)

Package: None

Current Referral: CPH

Introducer(s): IHARA, INOUYE, S. Chang, Keith-Agaran, Kim, Ruderman



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



February 22, 2017

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

Re: Testimony in Support of
SB627 RELATING TO CONDOMIMUMS
Hearing: Thursday, February 23, 2017, 9:30 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Nishihara and Members of the Committee:

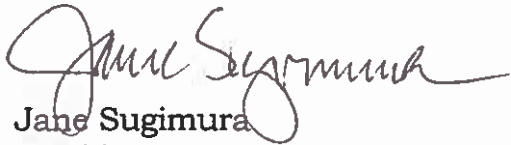
I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA). This organization represents the interests of condominium and community association members.

HCAAO supports the intent and purpose of this bill which clarifies a unit owner's right to participate in his or her association's board meetings. We believe that unit owner can and do provide valuable and useful information and input to the issues being considered by the Board and should be allowed to participate in those discussion, and not be limited to speaking only at the discretion of the Board or in the owners forum section of the Board meeting. Concerns that an owner or an owners group may monopolize the meeting agenda should not be given great weight because the Board president still retains the authority and the obligation to control the meeting so the president needs to establish reasonable rules, e.g., each speaker can speak for 2-3 minutes; a speaker cannot speak a second time on the same issue until everyone has had an opportunity to speak, set a time limit to complete discussion/debate so that the meeting agenda can be completed in a timely manner.

The bill needs to clarify the nature and process of an owner's participation in executive session. We understand that the reason for this provision is to allow owners to discuss with the Board private matters that they might be embarrassed to discuss in the public portion of the Board meeting. I have been informed that Roberts Rules already allows this and instead of limiting the association members "to attend executive session to present personal information" it might to better to insert a reference to Roberts Rules to acknowledge that invitees are allowed to attend executive sessions.

SB627 Relating to Condominiums
Senate Committee on Commerce, Consumer Protection and Health
February 22, 2017
Page 2 of 2

We believe that this bill benefits associations by encouraging communications between owners and their Boards. Accordingly, HCCA respectfully requests that you pass this bill out. If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.



Jane Sugimura
President



**HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS
LEGISLATIVE COMMITTEE
P. O. Box 29213
HONOLULU, HAWAII 96820-1613
E-MAIL: HSAP.LC@GMAIL.COM**

February 21, 2017

Hon. Senator Rosalyn H. Baker, Chair
Hon. Senator Clarence K. Nishihara, Vice-Chair
Senate Committee on Commerce, Consumer Protection, and Health (CPH)
Hawaii State Capitol, Room 230
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in OPPOSITION to SB627; Hearing Date: February 23, 2017 at 9:30 a.m. in Senate conference room 229; sent via Internet

Aloha Chair Baker, Vice-Chair Nishihara, and Committee members,

Thank you for the opportunity to provide testimony on this bill.

The Hawaii State Association of Parliamentarians ("HSAP") has been providing professional parliamentary expertise to Hawaii since 1964.

I am the chair of the HSAP Legislative Committee. I'm also an experienced Professional Registered Parliamentarian who has worked with condominium and community associations every year since I began my practice in 1983 (over 1,500 meetings in 33 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2004.

This testimony is provided as part of HSAP's effort to assist the community based upon our collective experiences with the bylaws and meetings of numerous condominiums, cooperatives, and Planned Community Associations.

This testimony is presented in OPPOSITION to SB627.

The bill has several technical flaws and overlooks the reality of association board meetings and executive sessions. Several of them are enumerated below:

- (a) Page 2, lines 12-18 mandate that owners may participate in any "deliberation or discussion unless allowed pursuant to subsection (b)". However, the reference to subsection (b) relates to executive session as if it was different from a board meeting. An executive session is a specific classification of a board meeting.

In an executive session, the board may invite non-board members to the extent that it is necessary to discharge their fiduciary duty as needed through the object of the executive session. There are limited reasons for executive session and they are enumerated in the statute.

The attendance at executive session should, in my opinion, be left entirely up to the board. There are several situations where a non-board member presence may be necessary or mandated by an existing association issue. This is further enumerated in item (d) below.

- (b) Page 2, line 18 states, “During deliberations, the board may limit the time provided to any member of the association in accordance with rules adopted by the board.”

IF the legislature wishes to keep this wording, we suggest that it be amended to use the word “debate” wherever deliberation or discussion is used. Another alternative is to use the exact wording from the previous sentence, that is “deliberation or discussion”.

- (c) Page 3, lines 13-15 state, “The board by a majority vote may allow members of the association to attend executive session to present personal information.”

This ignores two obvious points:

- (i) Under the parliamentary rules for executive session in Robert's Rules of Order Newly Revised (11th ed.), the board may, at its discretion, already allow non-board members to attend executive session meetings.¹
- (ii) The statement of permitting members to attend to “present personal information” has the effect of **restricting** association member attendance to presenting personal information.

This could preclude an association member from presenting other information at an executive session that is not personal but critical to prospective contracts, legal issues, etc.

- (d) Page 2, lines 15-18 state, “Members of the association shall not be permitted to attend any portion of the executive session when the discussion pertains to any

¹ RONR (11th ed.), pp. 94-95 state in part, “Whenever a meeting is being held in executive session, only members of the body that is meeting, special invitees, and such employees or staff members as the body or its rules may determine to be necessary are allowed to remain in the hall. Thus, in the case of a board or committee meeting being held in executive session, all persons—whether or not they are members of the organization—who are not members of the board or committee (**and who are not otherwise specifically invited or entitled to attend**) are excluded from the meeting.”
[Emphasis added.]

of the matters enumerated under paragraphs (1) through (4).”

This proposal would preclude attendance under all circumstances related to paragraphs (1) through (4).

It ignores the reality of executive sessions under certain circumstances. For example, a board, in executive session with their attorney may wish to question an association member regarding legal issues associated with another association member. In another case, the board may wish to question an association member formerly on the board about his or her previous experience with a specific management company contract, lease, or other transaction.

This wording would handicap a board to receive in a confidential executive session important information that may be needed to properly manage the association's affairs.

Section 1 of the bill (page 1, lines 5-9) states, “The purpose of this Act is to provide the members of associations of apartment owners an opportunity to attend and participate in all meetings of the board of directors of their association of apartment owners, including executive sessions with board approval.”

They **already** have a right to: (a) to attend non-executive session meetings, (b) participate subject to board limitations, and (c) attend executive sessions if approved by the board.

The bill will overly complicates executive session, **actually reduces** the opportunity for a board to obtain confidential information as needed to fulfill their fiduciary duty and is an unnecessary handicap.

We respectfully ask that you correct the substantial flaws in this bill or defer it.

If you require any additional information, your call is most welcome. I may be contacted via phone: 423-6766 or by e-mail: hsap.lc@gmail.com. Thank you for the opportunity to present this testimony.

Sincerely,

Steve Glanstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee
SG:tbs/Attachment

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 20, 2017 9:27 AM
To: CPH Testimony
Cc: richard.emery@associa.us
Subject: Submitted testimony for SB627 on Feb 23, 2017 09:30AM

SB627

Submitted on: 2/20/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Support	Yes

Comments: Support with the amendment to the language to add "or discussions" after "deliberations" for continuity. There is a technical difference between a deliberation and a discussion. Adding both terms maintains continuity.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 8:21 PM
To: CPH Testimony
Cc: lila.mower@gmail.com
Subject: *Submitted testimony for SB627 on Feb 23, 2017 09:30AM*

SB627

Submitted on: 2/21/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower	Hui `Oia`i`o	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 8:57 AM
To: CPH Testimony
Cc: lynnehi@aol.com
Subject: Submitted testimony for SB627 on Feb 23, 2017 09:30AM

SB627

Submitted on: 2/21/2017

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

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

Comments: I am a condo owner and board member. This testimony is in strong opposition to SB627. Boards have the discretion to invite non board members to attend executive session meetings, either for the entire session or specified items. That includes employees, management company representatives, attorneys, vendors, those involved in contract negotiations, owners, and others. This bill appears to be solving a problem that does not exist and should be deferred. Many associations follow Roberts Rules of Order. That is mandated in their governing documents. This bill could well nullify parts of that provision. It appears that the author(s) of this bill do not have a knowledge of how associations operate and how their specific bylaws and declarations dictate that operation and have not researched how their attempts to micromanage associations conflict with Roberts Rules of Order and perhaps other practices and procedures of various federal and state agencies. Please kill this bill. lynne matusow, 60 n. beretania, #1804, honolulu, hi 96817 531-4260

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 20, 2017 8:52 PM
To: CPH Testimony
Cc: john-a-morris@outlook.com
Subject: Submitted testimony for SB627 on Feb 23, 2017 09:30AM

SB627

Submitted on: 2/20/2017

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

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

Comments: Comments: My name is John Morris and I am testifying against SB 627 because it takes away the ability of a condominium board of directors to control its own meetings. Instead, the board will have to sit in its meetings and listen to owners, regardless of whether the owners are contributing anything of benefit or value to the meeting. This could cause board meetings to be extended beyond reasonable limits, simply because the legislature has decided that every owner who shows up at a board meeting should be allowed to participate. Serving on a condominium board is difficult enough without losing control of the meeting and being forced to treat every board meeting as if it were an annual meeting at which owners do have a right to participate. The legislature has not given up control of its own committee meetings. It is unclear why the legislature believes that board members should be forced to give up control of their own meetings. Thank you for this opportunity to testify. Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 12:02 PM
To: CPH Testimony
Cc: cporter@hawaiiilegal.com
Subject: Submitted testimony for SB627 on Feb 23, 2017 09:30AM

SB627

Submitted on: 2/21/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Christian Porter	Individual	Support	No

Comments: As an attorney that practices this in area, I support this proposed Bill as it clarifies what is already allowed under the law. Thank you for your consideration.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 2:18 PM
To: CPH Testimony
Cc: patfitz@excite.com
Subject: Submitted testimony for SB627 on Feb 23, 2017 09:30AM

SB627

Submitted on: 2/21/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Patrick Fitzgerald	Individual	Support	No

Comments: I support HB832 and SB627 to ensure the condo unit owner's right to participate in their association's board meetings. As a board member it addresses my concern that an owner could monopolize the meeting by having the president still retain the authority to control the meeting.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 21, 2017 11:15 PM
To: CPH Testimony
Cc: sunnymakaha@yahoo.com
Subject: Submitted testimony for SB627 on Feb 23, 2017 09:30AM

SB627

Submitted on: 2/21/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Dale A. Head	Individual	Support	No

Comments: I support this Senate Bill. See my testimony on companion HB 832.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Senator Roslyn H. Baker, Chair

Senator Clarence K. Nishihara, Vice Chair

Committee on Commerce, Consumer Protection, and Health

Tim Apicella

500 Lunalilo Home Road #26F

Honolulu, HI 96825

(808) 763-9592

Thursday, February 23, 2017 9:30 A.M.

Support for S.B. No. 627, Relating to Condominiums

I am submitting testimony in support for SB627. There is general acknowledgement in the legislature that there are numerous homeowner association issues in the state which continue to remain unresolved. Perhaps that is why there were over 100 condo/association bills that have been introduced in this 2017 legislative session.

For years, homeowner frustrations have grown and continue to spill out in the form of complaints to state government agencies-DCCA, RICO, REC, and AG. When homeowners are told by these agencies that they have no authority (except for document requests) to investigate or resolve their complaint against their board of directors (BOD), owners turn their frustrations over to the legislature to complain that “self-governing” associations don’t work and need government oversight.

Homeowner Associations are not considered government entities, yet they are defined as “self-governing” Homeowner Associations. For all appearances, a BOD exercise broad based powers. To the homeowner it might seem like they live under the authority of a government, and in some cases, those powers may seem greater than what federal, state, county, or city government can implement. These powers include but are not limited to:

Owner behavior regulation-For example, the ability of an association to prohibit: The ownership of pets, smoking inside his/her own condo unit, posting window signage, flying the American flag (or any flag), drying laundry on lanais, and the selection of color schemes for the home exterior and window coverings. Additionally, associations have the power to foreclose, assess for large capital improvements payable by 60-90 days, increase monthly dues with no ceiling limitations, create budgets, repair and maintain common elements, impose fees, rent common area space, create house rules, interpret existing association governing documents (Declaration, by-laws, house rules), and possess the authority to levy fines for perceived violations, hiring contractors and agents, execute contracts, and initiate litigation.

Given these multiple powers, it is important that an owner have the ability to attend the BOD meeting, to be able to either ask a question or make a comment as outlined in HRS 514B-125. Unfortunately, some BOD's ignore the spirit and intent of HRS 514B-125 and deny owners the ability to communicate. It should come as no surprise why there is condo/association dissatisfaction when owners are denied their 30-180 seconds to speak by being subject to a gag order as important decisions are being made in the owner's behalf, right in front of them. Simply stated, when owners are subject to a BOD abuse of power, it gives properly operated associations and their association management companies a bad name.

Support for SB627 is the first step to ease homeowner grievances. Communication at the BOD level is far more productive than waiting for owner grievances to be voiced in mediation, arbitration, or in court. Also, SB627 has zero impact to the state budget as compared to proposed bill (HB35) which adds staff and administrative costs to the AG's office in order to receive and investigate association owner complaints.

As equally important as it is to allow owners an opportunity to speak, HB832 also explicitly defines a BOD right to set time limitations of owner's participation (Currently it is implied in the existing law for a BOD right to exercise such provisions under Roberts Rules of Order).

The third clarification SB627 will have on HRS 514B-125 is a provision that an owner can request to meet privately with the BOD in executive session. Allowing an owner to attend executive session will continue to be subject to a majority vote by the board members present. The benefit of this provision will be that an owner has an opportunity to discuss sensitive, personal matters which would be difficult to do so in front of neighbors. For example, an owner might have a disability and wishes to seek an American Disability Act request for an accommodation. The ability to meet privately with the BOD helps the owner to preserve his/her federal HIPAA rights. Additionally, an owner may wish to discuss financial matters such as delinquent homeowner dues, special assessment payments, or fees. A private meeting of this nature aids the owner to preserve his/her financial disclosure rights. Resolving financial matters face to face may be beneficial to all parties, and may reduce protracted conflict, a rush for demand letters, and further legal collection efforts.

There are approximately 370,000 State of Hawaii residents living in condo/homeowner associations. Even if a small percentage of BOD deny an owner the ability to speak at an open board meeting, that still represents thousands of owners who are denied a basic right to petition the “self-governing” entity that has multiple, powerful influences over their lives. Passage of SB627 can have a positive outcome for all parties, and can serve as the first step to reduce the never ending number of owner grievances that are brought before the legislature.

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