

SB2483

Measure Title: RELATING TO CONDOMINIUM GOVERNING INSTRUMENTS.

Report Title: Condominiums; Governing Instruments; Alternative Method of Amendment; Declaration; Bylaws

Description: Authorizes an alternative method of amendment for a condominium association's declaration and bylaws; provided that certain requirements are met.

Companion: [HB2619](#)

Package: None

Current Referral: CPH

Introducer(s): K. RHOADS

HAWAII CHAPTER

community

ASSOCIATIONS INSTITUTE

Honorable Rosalyn H. Baker
Honorable Jill N. Tokuda
Committee on Commerce, Consumer Protection and Health
415 South Beretania Street
Honolulu Hawaii 96813

RE: Senate Bill 2483

Dear Chair Baker, Vice-Chair Tokuda and Committee Members

CAI opposes SB 2483.

When the condominium law was re-codified in 2006, it set the current requirement for amending condominium governing documents at 67% of the common interest. When that level was set, it represented a lower threshold than was provided in previous law.

SB 2483 assumes a perceived difficulty in obtaining this level of support for amendment of governing documents. It would subvert the existing law by creating an alternative method of amendment that would lower the threshold for amendment of governing documents even lower. If an easier process for amending the documents was available, there would be no reason to attempt to approve an amendment by current methods.

A condominium's governing documents are fundamental to its existence and operation. It is proper that a diligent and rigorous effort be necessary for amendment through the affirmative vote of a super-majority.

The proposed amendment requires only that a notice be sent for a meeting to be scheduled at least thirty days thereafter. This short-term notice requirement would require all owners to be ever-ready to attend a meeting to defend their rights.

Under SB 2483, coming home from a vacation to a changed home would present a frightening risk. The range of subjects that can be changed would be unlimited. The statutory safeguards under existing law are important for consumer protection. Those protections should not be weakened.

CAI therefore respectfully requests that the Committee decline to adopt SB 2483.

Submitted by:

Allen Wilson

Allen Wilson | Vice President

Hawaiiana Management Company, Limited

Member of the Legislative Action Committee

Community Associations Institute, Hawaii Chapter

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 21, 2018

Honorable Rosalyn H. Baker
Honorable Jill N. Tokuda
Committee on Commerce, Consumer Protection, and Health
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 2483 OPPOSE

Dear Chair Baker, Vice-Chair Tokuda and Committee Members:

CAI opposes SB 2483. Current law appropriately provides that condominium governing documents may be amended with the support of owners holding at least 67% of the common interest.¹ That level was set when condominium law was re-codified, and it represents a lower threshold than was provided in prior law.

The perceived difficulty of obtaining sufficient support for amendment of governing documents was *studied*, and current law results from that study. It should be noted that the circuit courts are empowered to excuse compliance with governing document provisions in certain circumstances, per HRS §514B-111.

SB 2483 would effectively subvert existing law by creating an "alternative method of amendment" that would lower the threshold for amendment of governing documents. There would be no reason to pursue amendment by current methods if an easier method with a lower threshold were available.

The governing documents of a condominium are fundamental to its existence and operation. It is appropriate to require strong support for amendment, by the affirmative action of a super-majority.

The proposed alternative would be vulnerable to significant abuse that could be harmful to consumers. This is so both in terms of *process* and *substance*.

¹ With limited exception, "the approval of the owners of at least sixty-seven per cent of the common interest shall be required for all amendments to the declaration;" per HRS §514B-32(a)(11). Further, "The bylaws may be amended at any time by the vote or written consent of at least sixty-seven per cent of all unit owners." HRS §514B-108(e).

Honorable Rosalyn H. Baker
Honorable Jill N. Tokuda
February 21, 2018
Page two

The proposed alternative *process* merely requires that a notice be sent for a meeting to be scheduled at least thirty days thereafter. This would leave all owners in need of ever being at the ready to attend a meeting to defend their rights.

Scheduling conflicts, family obligations, work, travel and other factors may affect meeting attendance. Consumers should not have to risk the fundamental character of their association if they have other priorities. A lowered approval threshold would exacerbate that risk.

It is worth noting that unintended consequences could follow from SB 2483. For example, the *timing* of meetings could be cynically manipulated to dampen attendance. People often go on vacation during spring break or in the summer. Coming home to a changed place should not be a risk of going on vacation.

Under SB 2483, coming home to a changed place would be a real risk. The subject matter of what can be changed would be *unlimited*.

The procedural and substantive safeguards under existing law are important for consumer protection. Those protections should not be weakened.

CAI therefore respectfully requests that the Committee decline to adopt SB 2483.

Very truly yours,

Philip Nerney

Philip Nerney



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



February 21, 2018

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

Re: Testimony in opposition to
SB2483 RELATING TO CONDOMINIUM GOVERNING INSTRUMENTS
Hearing: Friday, Feb. 23, 2018, 10 a.m., Conf. Rm. #229

Chair Baker and Vice-Chair Tokuda and Members of the Committee:

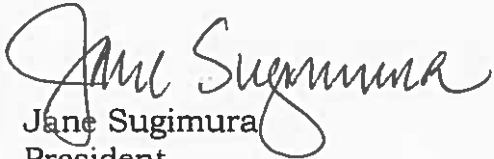
I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAA dba HCCA).

HCCA opposes this bill for the following reasons:

- The condominium governing documents (i.e., the association Declaration and Bylaws) affect every owner and resident in the condominium project and changes to the governing documents should continue to be made only upon approval of a super-majority, i.e., 67% of the ownership interest.
- Buying and owning a condominium is one of the largest investment an owner can have and therefore changes to the governing documents should be deliberate and reflect the will of the super-majority.
- This bill would allow less than a majority to change the governing documents since it proposes an alternative method which provides for a special association meeting where 67% of the owners are present in person or by proxy. This provision assumes that all 67% of the owners would vote in favor of the proposed amendment, which is clearly unlikely and the second provision would then allow the majority of those present at that meeting (where 67% are present in person or by proxy) to approve the proposed amendment, which means that less than a majority would be able to change the governing documents that would affect all of the owners and residents. This is clearly unfair to all of the owners in the condominium project.

SB2483 Relating to Condominium Governing Documents
Senate Committee on Commerce, Consumer Protection & Health
February 21, 2018
Page 2 of 2

Accordingly, HCCA respectfully requests that you defer action on this bill. Thank you for the opportunity to testify on this matter.


Jane Sugimura
President

SB-2483

Submitted on: 2/21/2018 6:13:05 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Testifying for Associa	Oppose	Yes

Comments:

The governing documents of the association can be amended with the proper vote of its members. Under the current law, and amendments happen all the time. To reduce the quorum and voting requirements is not to the benefit of its members and exposes the association to abuse. Any association could amend its documents now and accomplish the same thing.



Date: February 21, 2018

To: The Honorable Rosalyn H. Baker, Chair
The Honorable Jill N. Tokuda, Vice Chair
Members of the House Committee on Commerce, Consumer Protection and Health

From: Jessica Yamauchi, Executive Director, Hawai'i Public Health Institute

Re: **Support for SB 2483, Relating to Condominium Governing Instruments**

Hrg: February 23, 2018 at 10:00am at Capitol Room 229

Thank you for the opportunity to submit testimony in **SUPPORT** of SB2483 which creates an alternative method of amendment for a condominium association's declaration and bylaws.

The Coalition for a Tobacco-Free Hawai'i (Coalition) is a program of the Hawai'i Public Health Institute (HIPHI) that is dedicated to reducing tobacco use through education, policy, and advocacy. With two decades of history in Hawai'i, the Coalition has led several campaigns on enacting smoke-free environments, including being the first state in the nation to prohibit the sale of tobacco and electronic smoking devices to purchasers under 21 years of age.

Difficulty Passing Bylaws.

The Coalition for a Tobacco-Free Hawaii has worked with numerous condominiums interested in passing a smoke-free bylaw amendment. The difficulty we have encountered in passing bylaw amendments in condominiums is low ballot returns. Currently, state law requires that 67 percent of all owners within a one-year timeframe must vote in favor of a bylaw in order for it to pass. Passing a bylaw amendment is often challenging, time-consuming, and expensive for condominiums. Often times a bylaw amendment fails because of poor ballots returns. This measure would provide condominiums an alternative method to amend bylaws while maintaining a fair process.

SB 2483 helps to promote smoke-free environments.

This measure would help condominiums to amend bylaws to include smoke-free policies. These policies help to protect unit owners from the high costs associated with the removal and damage caused by thirdhand smoke. Thirdhand smoke clings to walls, ceilings, carpets, draperies, and other furniture. They remain at high levels long after smoking has stopped and has shown to reemit back in the air as toxic compounds that can be inhaled by those that have moved into the home. This measure also aims to protect nonsmoking neighbors from the health dangers of inhaling tobacco smoke. The Coalition supports any efforts to reduce secondhand and thirdhand smoke exposure in multi-unit dwellings.

A majority of Hawai'i residents – 85%, prefer to buy or rent a house or apartment that is smoke-free.

An independent poll conducted by Ward Research Inc. for the Coalition, in November 2017 finds that 88% of registered Hawai'i voters would choose to buy or rent a smoke-free house or apartment.

Condominium and apartment residents are suffering from secondhand smoke, a known carcinogen, with little recourse.

The Coalition receives calls from residents who reside in multi-unit housing and who have asthma and other health issues affected by secondhand smoke exposure. The Coalition supports efforts that will encourage any multi-unit dwelling to go smoke-free. Through our efforts we have learned that all residents—regardless if they have asthma, COPD or other health issues—are impacted by the hazards of secondhand smoke.

Thank you for the opportunity to testify in **support** of SB2483. We respectfully ask that you pass this measure out of committee.

Mahalo,



Jessica Yamauchi, MA
Executive Director, HIPHI

¹ Singer, B., Hodgson, A., Nazaroff, W. (2002). "Effect of absorption on exposures to organic gases from environmental tobacco smoke (ETS)" available at <http://eetd.lbl.gov/node/49332>

SB-2483

Submitted on: 2/21/2018 10:00:41 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

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

Comments:

This measure proposes an alternate method of amending an association's governing documents when certain standards are met. But the measure does not examine the simple process of providing notice to owners, which failure is possibly the most common complaint among condo owners.

Do legislators accept that proper delivery of notice was made when the delivery of notice meant for a onsite resident-owner is made to that owner's former spouse's father located miles away? Note that other association-related mail, such as monthly common expense statements and association newsletters were correctly delivered to the owner's onsite residence.

(Ultimately, the association and its attorney blamed the estranged ex-spouse for failing to notify the resident owner; however, that ex-spouse lived over 3000 miles away and was not aware of notices delivered to his elderly father's address.)

Until the Legislature can assure that proper notification was provided to owners, subsequent actions caused by the failure of proper notification should be not be encouraged.



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

February 21, 2018

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

**RE: COMMENTS regarding SB2483; Hearing: February 23, 2018 at 10:00 a.m. in
Senate conference room 229; sent via Internet**

Aloha Chair Baker, Vice-Chair Tokuda, 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 parliamentary practice in 1983 (more than 1,700 meetings in 35 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 as commentary on SB2483.

Current Rules:

Currently, a 67% vote of the entire common interest is generally required to amend a condominium association's declaration or bylaws.

HRS §514B-32(a) (11) permits a declaration amendment by, "the approval of the owners of at least sixty-seven percent of the common interest". It doesn't prescribe a voting process or written consent.

HRS §514B-108(e) permits a bylaw amendment by written consent or vote at a meeting. It also prescribes a one year time limitation.

Proposed Legislation:

SB2483 proposes to provide an alternate method of amendment to address difficulties that some associations have amending their documents.

It provides stricter notice requirements including a detailed rationale for the proposed amendment and a proxy form containing an option for a specific vote on the proposed amendment.

This is a higher notice requirement than normally required for declaration or bylaw amendments. Currently, an owner has the right to propose a declaration or bylaw amendment at an annual meeting and no advance notice is required.

Additionally, the amendment cannot be changed at the meeting without triggering the higher voting requirement that currently exists in the statute.

The required vote at the meeting is similar to the traditional generic parliamentary requirement for amending bylaws of an organization when no vote requirement is specified in the law or any documents.

SB2483 Section 2 on page 3, lines 10-17 propose to permit alternative voting requirements, **whichever is higher**:

- (a) 67% requirement of those owners present and voting¹; and
- (b) an affirmative vote of a majority of all unit owners².

“A majority of all unit owners” is much more difficult to obtain than 67% of those “present and voting” except in small associations.

Therefore, SB2483 effectively provides for a voting requirement of more than 50% of the unit owners. This is slightly less than the current law requirement of 67% of the common interest or 67% of all unit owners.

In a large condominium, obtaining more than 50% of all unit owners will still be quite difficult.

¹ The 67% of those present and voting is a rounded number from the parliamentary practice as a “2/3^{rds} vote.”

² “A majority of all unit owners” is **not** defined in Chapter 514B and we recommend use of the wording in HRS §514B-3 which provides for standardized definitions (described on page 3 of this testimony).

Proposed Changes:

We recommend a couple of technical changes for consistency with the definition of “majority of the unit owners” in HRS §514B-3 which defines, “Majority” or “majority of the unit owners.”

- (a) Page 1, lines 9-10, amend as follows, “where sixty-seven percent of owners who are present **and voting** at a pre-announced”,
- (b) Page 1, line 11, amend as follows, “meeting, or a majority of **[all] the** unit owners, whichever is greater,”
- (c) Page 3, lines 15-16, amend as follows, “(B) An affirmative vote of a majority of **[all] the** unit owners approve**[s]** the proposed amendment;”

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

Sincerely,

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

SB-2483

Submitted on: 2/22/2018 6:43:20 AM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower for Kokua Council	Testifying for Kokua Council	Oppose	No

Comments:

CHARLES E. PEAR, JR.
ATTORNEY AT LAW

DIRECT #S:
PHONE - (808) 223-1212
FAX - (808) 535-8029
E-MAIL - PEAR@M4LAW.COM

January 22, 2018

Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Members of the Senate Committee on
Commerce, Consumer Protection, and Health
Twenty-Ninth Legislature
Regular Session, 2018

Re: S.B. 2483
Hearing on February 23, 2018, 10:00 a.m.
Conference Room 229

Dear Chair, Vice Chair and Members of the Committee:

My name is Charles Pear. I am testifying as legislative counsel for ARDA Hawaii.

ARDA Hawaii opposes SB2483.

Many Hawaii time share plans are established in a condominium project. As a result, it is important to ARDA Hawaii that amendments to the Condominium Act be clear, concise and practical. S.B. 2483 proposes an alternative means of amending the declaration and bylaws of a condominium. However, the bill appears to contain flaws, including the following:

1. An amendment to the condominium documents can affect important rights of the condominium unit owners. However, subsection (4) allows a meeting to be called on thirty days' notice. Many Hawaii timeshare owners reside on the mainland. While 30 days may be sufficient for a residential condominium, time share owners may require a longer period to arrange for time off from work and to make flight reservations and other travel plans. Owners in other resort condominiums, not just time share condominiums, may likewise require more advance notice of any association meeting that may alter their ownership rights or obligations.

2. Subsection (5) requires that owners be provided with a rationale for the proposed amendment but does not require that a copy of the actual amendment be provided. We think that the amendment should be provided to the owners. It probably would also be helpful to provide a plain language explanation or summary of the amendment and rationale so that owners will have a clear understanding of what they are voting on.

3. Subsection (6) fails to take into account that amendments may require approvals or consents of third parties, as recognized by Section 514B-32(a)(11). For example, a declaration typically prohibits amendments of certain rights of a lessor, mortgage lender, or developer without their consent or approval. This is particularly important to ARDA Hawaii. It would also be important to other developers constructing condominium projects in phases.

4. The language of subsection (6) is unclear. For example, it is not clear whether approval by a majority of owners must be obtained by way of a vote at a meeting, by ballot, or in some other manner. It is possible that the bill intends to permit approval by vote of 67% of the owners casting votes at a meeting but in no case less than a majority of the total common interest of the project. However, we were uncertain whether this was the objective of the bill.

5. The bill does not include a provision comparable to that found in Section 514B-110 of the Condominium Act, which provides:

(g) No petition for a bylaw amendment pursuant to subsection (b)(2) to modify the composition of the board shall be distributed to the unit owners within one year of the distribution of a prior petition to modify the composition of the board pursuant to subsection (b)(2).

This kind of provision helps an association to avoid the expense of repeatedly having to call association meetings to consider changes previously rejected by vote of the owners.

Thank you for your kind consideration of our comments. I would be happy to take any questions if you think that I may be of some small assistance.

Very truly yours,

Charles E. Pear, Jr.

CEP:kn

CHARLES E. PEAR, JR.
ATTORNEY AT LAW

DIRECT #:
PHONE - (808) 223-1212
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February 22, 2018

Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Members of the Senate Committee on
Commerce, Consumer Protection, and Health
Twenty-Ninth Legislature
Regular Session, 2018

Re: S.B. 2483
Hearing on February 23, 2018, 10:00 a.m.
Conference Room 229

Dear Chair, Vice Chair and Members of the Committee:

My name is Charles Pear. I am testifying as legislative counsel for ARDA Hawaii.

ARDA Hawaii opposes SB2483.

Many Hawaii time share plans are established in a condominium project. As a result, it is important to ARDA Hawaii that amendments to the Condominium Act be clear, concise and practical. S.B. 2483 proposes an alternative means of amending the declaration and bylaws of a condominium. However, the bill appears to contain flaws, including the following:

1. An amendment to the condominium documents can affect important rights of the condominium unit owners. However, subsection (4) allows a meeting to be called on thirty days' notice. Many Hawaii timeshare owners reside on the mainland. While 30 days may be sufficient for a residential condominium, time share owners may require a longer period to arrange for time off from work and to make flight reservations and other travel plans. Owners in other resort condominiums, not just time share condominiums, may likewise require more advance notice of any association meeting that may alter their ownership rights or obligations.

2. Subsection (5) requires that owners be provided with a rationale for the proposed amendment but does not require that a copy of the actual amendment be provided. We think that the amendment should be provided to the owners. It probably would also be helpful to provide a plain language explanation or summary of the amendment and rationale so that owners will have a clear understanding of what they are voting on.

Chair, Vice Chair and Members,
Senate Committee on Commerce,
Consumer Protection, and Health
February 22, 2018
Page 2

3. Subsection (6) fails to take into account that amendments may require approvals or consents of third parties, as recognized by Section 514B-32(a)(11). For example, a declaration typically prohibits amendments of certain rights of a lessor, mortgage lender, or developer without their consent or approval. This is particularly important to ARDA Hawaii. It would also be important to other developers constructing condominium projects in phases.

4. The language of subsection (6) is unclear. For example, it is not clear whether approval by a majority of owners must be obtained by way of a vote at a meeting, by ballot, or in some other manner. It is possible that the bill intends to permit approval by vote of 67% of the owners casting votes at a meeting but in no case less than a majority of the total common interest of the project. However, we were uncertain whether this was the objective of the bill.

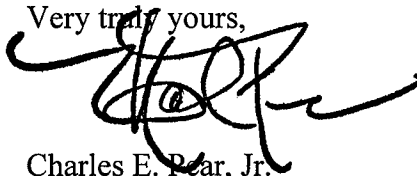
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This kind of provision helps an association to avoid the expense of repeatedly having to call association meetings to consider changes previously rejected by vote of the owners.

Thank you for your kind consideration of our comments. I would be happy to take any questions if you think that I may be of some small assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Charles E. Pear, Jr.', written over the typed name below.

Charles E. Pear, Jr.

CEP:kn

SB-2483

Submitted on: 2/22/2018 9:04:28 AM

Testimony for CPH on 2/23/2018 10:00:00 AM

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

Comments:

Chair Baker,

As a practitioner that represents condominiums in this State, I oppose SB2483 for the reason that owners buying into condominiums know that to change their governing documents, i.e., contracts, a vote of owners representing 67% of the common interest needs to be obtained. This legal right cannot be changed by this proposed measure as it is potentially unconstitutional to change someone's contractual rights in this fashion.

Moreover, the process of voting to amend governing documents works. Projects do get 67% vote when it is supported. There is nothing wrong with the current system, and thus, nothing that needs to be "fixed". Thank you for your consideration in deferring this measure.

Christian Porter

Porter McGuire Kiakona & Chow, LLP

SB-2483

Submitted on: 2/20/2018 10:30:22 AM

Testimony for CPH on 2/23/2018 10:00:00 AM

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

Comments:

As a condo owner and board member, I believe that supermajorities should be maintained in amending our governing documents. They are our constitution and should not be taken lightly. Several years ago we amended our documents regarding air conditioners, to bring the rules into the modern age. It was difficult, but we worked hard to get the amendment ratified. We are now proposing an important amendment which will affect the building envelope, and specifically caulking, glazing, and replacement of windows. This is a health and safety issue, as well as an expensive undertaking. We are diligently working to get the required 67% approval. I do not support lowering the threshold to make it easier.

Sixty seven percent attendance at a meeting does not mean that all will vote the same way. Also, some of the proxies will be for quorum purposes only and cannot be counted in the 67%. Changing what is our constitution should not be slam dunk. It needs time, effort, thoughtfulness, and careful review.

Lynne Matusow

From: liis@hawaii.rr.com
To: [CPH Testimony](#)
Subject: SB2483 being heard by CPH on Feb. 23 at 10. Strong Opposition
Date: Wednesday, February 21, 2018 12:12:16 PM

I am submitting testimony is **STRONG OPPOSITION TO SB2483**. This bill proposes an alternative method to lower the threshold to amend condo docs. There should be no lower threshold. This bill would allow a few crazy owners to basically hi-jack our condo community and create instability.

Li`i Kau

From: beeps@hawaii.rr.com
To: [CPH Testimony](#)
Subject: Testimony in Strong Opposition to SB2483 being heard on Feb. 23 at 10a.m. by CPH
Date: Wednesday, February 21, 2018 11:50:34 AM

My name is Doris Aragaka. I am a condo owner and I am in strong opposition to SB2483. There is already a procedure to amend condo docs that has been fully vetted. This alternative method is just a way to get around the rules. Such attempts by a single condo owner like Senator Rhoads should not be rewarded. If Senator Rhoads wants to change his condo docs. he should work with his fellow neighbors in his condo and not try to create havoc for the rest of us. Please DO NOT PASS SB2483. mahalo DA

Sandra-Ann Y.H. Wong

Attorney at Law, a Law Corporation

1050 Bishop Street, #514

Honolulu, Hawaii 96813

TESTIMONY IN STRONG OPPOSITION TO SB 2483

Before the Committee on Commerce, Consumer Protection, and Health

on Friday, February 23, 2017 at 10a.m.

in Conference Room 229

Aloha Chair Baker, Vice Chair Tokuda, and members of the Committee:

I am writing in **strong opposition to SB2483**.

I have been a condominium owner in Hawaii for the last 25 years and I have served both past and present on my condominium boards.

SB2483 proposes an alternative method which would further lower the threshold for amending condominium documents such as Declarations and Bylaws. Such a proposal if passed would lead to instability and tyranny at condominiums.

It would allow a minority of extreme owners to “rule” and oppress the silent majority of owners. The condominium documents sets the foundation for day to day life at condominiums, especially in regards to use of common elements. Declarations and Bylaws govern all common elements, who is eligible to be on the condominium Board, whether the condominium is pet friendly; whether the condominium is non-smoking, etc. In other words, the Declarations and Bylaws, governs the lives of every single owners 24/7. Thus, like our Federal and State Constitutions, amending condominium documents must have a high threshold. It should not be changed at the whim of a small minority.

When owners purchase a condominium they review the condominium documents to see if a particular condominium is right for them. For example, if you smoke, you don’t want to buy into a non-smoking building or if you don’t like pets, you don’t want to buy into a pet friendly building. Thus, it is unfair to change the rules of the game on owners, unless a super majority of the owners are in favor of such a change. If a prospective owner does not like what is set out in the Declarations and/or Bylaws of a condominium, that prospective owner has a choice of looking for another condominium that has Declarations and Bylaws that are a better fit for his/her lifestyle.

Moreover, a lower threshold will lead to instability. With a low threshold, it increases the probability of condominium documents being changed frequently. This would cause havoc at condominiums. E.g. one day you can only wear blue slippers in the common

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areas, the next day blue slippers are forbidden, the day after only blue and yellow slippers are permitted.

Currently the statute has a procedures to amend condominium associations' documents that is fair to all owners. Thus, I strongly urge you to not fix, what is not broken, and hold SB2483. I have spoken with many of my condo neighbors and they share my strong opposition to SB2483.

Thank you for the opportunity to provide testimony in **Strong Opposition to SB2483**.

From: [Mike Wong](#)
To: [CPH Testimony](#)
Subject: Testimony in Strong Opposition to SB2483 being heard on Feb. 23 at 10a.m. by CPH
Date: Thursday, February 22, 2018 9:45:11 AM

Hello,

I am writing in STRONG OPPOSITION to SB2483.

Declarations, bylaws, and other governing instruments are the "Constitution" for AOA's.

Lowering the threshold for amending declarations and bylaws diminishes their significance and importance. I have seen, first hand, small groups of overzealous owners who believe their opinion is the only one that matters. SB2483 would allow these owners to take advantage of a lowered threshold to change condominium documents, circumventing the high standards that were set to prevent such actions from occurring.

Imagine if we made it easier to ratify proposed Constitutional amendments. That could lead to chaos and instability. The same holds true for condominium Declarations and Bylaws, which set the foundation of our day to day lives, control common elements, etc.

These changes are NOT GOOD for condominium owners as a whole. This only benefits special interest groups.

Thank you for the opportunity to provide testimony in OPPOSITION to SB2483.

Mike Wong



SB-2483

Submitted on: 2/22/2018 4:33:04 PM

Testimony for CPH on 2/23/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
A Denys	Individual	Oppose	No

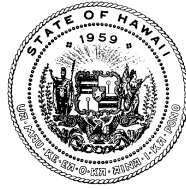
Comments:

Aloha,

I oppose SB2483 as written. The voting percentage of 67% is working and allows a larger majority of owners to vote on important issues such as bylaw revisions. Allowing a much smaller percentage rate could allow a small group of dissident owners to make changes that would restrict the overall ownership of their rights as an owner. Mahalo.

warmest aloha

A, Denys



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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**Testimony COMMENTING on S.B. 2483
RELATING TO CONDOMINIUM GOVERNING DOCUMENTS**

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Hearing Date: February 23, 2018

Room Number: 229

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health (DOH) offers comments on the public
3 health potential offered through Senate Bill 2483 (S.B. 2483) to amend current condominium
4 bylaws.

5 The Department of Health receives second hand smoke (SHS) complaints from the public
6 and provides information on what they can do to protect themselves and their family members.
7 In the case of people in multi-unit dwellings, one option is through amending their condominium
8 bylaws. However, the Department has been informed by individuals who have tried this strategy
9 that the process is extremely time consuming, expensive, and often futile given the current laws
10 that require the board to achieve a supermajority of votes. Many voting members are foreign
11 investors who may be indifferent and far-removed from the governance process and needs, and
12 not participate. The new section proposed to Section 514B, Hawai'i Revised Statutes, will
13 provide more consideration for the unit owners who are present and voting, and seeking remedy
14 from SHS exposure through improvements in their bylaws.

15 Individuals who live in multi-unit housing are especially susceptible to involuntary
16 exposure to secondhand smoke (SHS) both in Hawaii and the United States. According to data
17 from the 2013-2014 National Adult Tobacco Survey, tobacco use was higher among those living

1 in multi-unit housing (24.7%) versus those living in single family homes (18.9%).¹ This survey
2 also showed that among those living in multi-unit dwellings, with no-smoking rules,
3 approximately 34.4% experienced incursions of SHS from neighbors or somewhere in the
4 building.² Hawaii has a relatively high volume of multi-unit housing dwellers (46% Hawaii vs.
5 32% U.S.) as compared to the rest of the nation, leaving many in a vulnerable position when
6 choosing to rent or purchase a unit in a building.^{3,4} People who live in public housing operated
7 by the Hawaii Public Housing Authority receive protections from SHS through state law and
8 federal rules.⁵ However, those in Hawaii who rent or own market-rate multi-unit housing have
9 no jurisdictional protections against SHS.

10 According to the American Society for Heating, Refrigeration, and Air Conditioning
11 Engineering (ASHRAE), the organization that develops engineering standards for building
12 ventilation systems, the only way to effectively eliminate SHS exposure is to ban it altogether.⁶
13 No amount of ventilation or air filtration can effectively eliminate the health risks caused by
14 SHS.⁷ The U.S. Surgeon General holds that there is no safe level of exposure to SHS. Even
15 small amounts can cause serious harm to human health, especially to cardiovascular and
16 respiratory systems. Children exposed to SHS are at risk for more severe asthma, ear infections,
17 respiratory infections, and sudden infant death syndrome (SIDS).⁸ Smoke-free housing policies

¹ Nguyen, K. H., MS, MPH, Gomez, Y., MPH, Homa, D. M., PhD, & King, B. A., PhD, MPH. (2016). Tobacco Use, Secondhand Smoke, and Smoke-Free Home Rules in Multiunit Housing. *American Journal of Preventive Medicine*, 51(5), 682-692. <http://dx.doi.org/10.1016/j.amepre.2016.05.009>

² Ibid.

³ U.S. Department of Health and Human Services. *Let's Make the Next Generation Tobacco-Free: Your Guide to the 50th Anniversary Surgeon General's Report on Smoking and Health (2014)*.

<https://www.surgeongeneral.gov/library/reports/50-years-of-progress/consumer-guide.pdf>

⁴ United States Census Bureau. *2012-2016 American Community Survey, 5-Year Estimates: Retrieved February 22, 2018 from* <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

⁵ U.S. Department of Housing and Urban Development, Smoke-Free Public Housing and Multifamily Properties, Retrieved February 22, 2018 from https://www.hud.gov/program_offices/healthy_homes/smokefree

⁶ ANSI/ASHRAE Standard 62.1-2013, Addenda 2015 - Ventilation for Acceptable Indoor Air Quality. ta, GA: American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. Atlanta, GA: American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. <https://www.ashrae.org/File>

Library/docLib/StdAddenda/62_1_2013_2015Supplement_20150203.pdf Retrieved February 22, 2018 from <http://www.no-smoke.org/getthefacts.php?id=56>

⁷ Ibid.

⁸ Centers for Disease Control and Prevention, Health Effects of Secondhand Smoke, Retrieved February 22, 2018 from https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm

1 are endorsed by major national organizations as a critical important public health measure. The
2 Centers for Disease Control and Prevention (CDC), the American Lung Association, and the
3 American Heart Association provide guidance, resources, and policy statements on the
4 implementation of smoke-free multiunit housing policies. For those living in market-rate
5 condominiums and apartments, adoption of smoke-free policies is the only form of legal
6 protection against SHS.

7 Thank you for the opportunity to provide testimony.