

# SB2624

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Voting Documents; Administrative Costs; Retention; Association Books and Records

Description: Requires owners to pay for administrative costs, related to voting documents, in excess of forty hours per year. Requires proxies and ballots to be retained for five years. Criminalizes knowingly making any false certificate, entry, or memorandum upon any of the books or records of any managing agent or association and knowingly altering, destroying, mutilating, or concealing any books or records of a managing agent or association.

Companion:

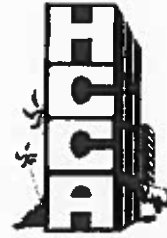
Package: None

Current Referral: CPH, JDC

Introducer(s): GALUTERIA, INOUYE, S. Chang, Dela Cruz, K. Kahele, Kidani, Nishihara, Shimabukuro, Wakai



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



February 2, 2018

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

Re: Testimony in opposition to  
SB2624 RELATING TO CONDOMINIUMS  
Hearing: Wed., Feb. 7, 2018, 10 a.m., Conf. Rm. #229

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

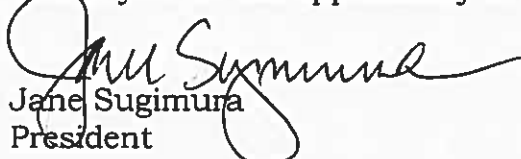
I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA).

HCAAO does not support this bill. Storing ballots for 5 years is totally unreasonable given that the election of officers is an annual event. If the proponent of this bill wishes to extend the time to hold the ballots to allow a challenge, I suggest that an extension from 30-60 days to 60-90 days.

We also oppose expanding the "free" administrative time for owners from 8 to 40 hours. Since the administrative services are being provided in most instances by paid employees of the property management firms that administer the records of associations, 40 "free" hours per owner would create a huge financial burden for those firms, which will likely be passed on to the associations. If the owners want to use the administrative services of the property management firms to search for records or information, they should pay for it.

Finally we oppose criminalizing conduct by the Board as set forth in this bill. The Board members of these associations are unpaid volunteers. They are already exposed to personal liability under the condominium statute if they breach their fiduciary duty. If you expose their conduct to criminalization, it will be even harder than it is now to get members to serve. Criminalizing the conduct of a managing agent makes no sense since they only act at the direction of the Board. For these reasons, we respectfully request that that you defer action on this bill.

Thank you for the opportunity to testify on this matter.

  
Jane Sugimura  
President

**SB-2624**

Submitted on: 2/5/2018 10:26:56 AM

Testimony for CPH on 2/7/2018 10:00:00 AM

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

Comments:

New elections are held every year. Since elected directors make decisions for the association any effort to overturn an election potentially years later creates undue potential liability for an association. Directors are volunteers and criminalization will only create barriers to run for election. There is no facts that support that there is some industry problem where records are being falsified. Management companies represent the association and the suggestion that they must provide 40 hours free service (one week of labor) to an owner is not reasonable.

**SB-2624**

Submitted on: 2/5/2018 2:29:17 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Philip L. Lahne	Anderson Lahne & FujisakiLLP	Oppose	No

Comments:

**SB-2624**

Submitted on: 2/6/2018 7:58:26 AM

Testimony for CPH on 2/7/2018 10:00:00 AM

<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:

From 2015-2016, I personally participated in or supervised the reviews of ten elections' records reviews. Six condo associations and three management firms were involved. Dozens of condo owners participated, providing ample witnesses for each review. One review took ten owners more than 12 hours over two days to complete. Contrary to popular lore, none of the reviews was instigated by an owner who "lost" an election. These reviews were academic exercises planned before the elections occurred to test the veracity of those elections.

All these reviews revealed that those elections were tampered with or, at the very least, that proxies were improperly allocated and almost always to the incumbent Board without the approval of the then disenfranchised-owners.

One of these reviews resulted in last year's Act 73, regarding the assignment of proxies.

"Voting is one of the most important rights reserved to the members of [an] association. The action most commonly voted on by members is the election of directors. [Directors] have tremendous latitude and power to operate the business of the association so the integrity of their election is especially important...A board will usually have authority over enforcement, discipline, rules-adoption, construction, repairs, loans, contracts and dispute resolution." -- David J. Graf, Moeller Graf, P.C. and Steven S. Weil: Community Association Voting: Evolving Trends in Membership Elections of Directors and the Authorization of Corporate Action (2014)

Condo associations are significant in the lives of a large percentage of Hawaii residents. The destiny of an association is vested in the rights of its people to scrutinize governance through its actions and the records which should document those actions. Thus, protecting the democratic character of such associations by promoting transparency and assuring integrity should be a principal goal of all legislators.

**SB-2624**

Submitted on: 2/2/2018 9:42:42 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marcia Kimura		Support	No

Comments:

I support this bill because regulation to control and prevent election fraud and perpetual reelection by the same members is sorely needed in condo administration, and all materials should remain available for inspection at least five years.

**SB-2624**

Submitted on: 2/2/2018 11:03:45 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow		Comments	No

Comments:

I believe that holding proxies and ballots for five years is too long. I also believe that the current practice of holding them for 30 days is too short. I suggest the holding period be two years. Having audited proxies in the past, the material is voluminous. Property management companies charge associations for storage space, and the five year period would create unnecessary expense for associations.

lynne matusow

**SB-2624**

Submitted on: 2/3/2018 12:06:06 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Philip Nerney	CAI	Oppose	No

Comments:

I am testifying as an individual.

Without limitation, 1) Chapter 514A has been repealed; 2) challenges to an association's election are rendered moot by a subsequent election. *See, Taniguchi v. King Manor*, 155 P.3d 1138, 1152 (Hawaii 2007); 3) condominiums have annual elections, so there is no reason to require a lengthy retention period; 4) the measure would involve increased common expenses; and 5) the measure enables vexatious administrative requests to be made without consequence.



**SB-2624**

Submitted on: 2/3/2018 5:09:47 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Hawaiian Civic Club of Honolulu	Support	No

Comments:

**SB-2624**

Submitted on: 2/3/2018 9:57:44 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dale	Head	Support	Yes

Comments:

This is an improvement over the previous '8 hours' cap. When I went down to Hawaiian Properties, our 'manager' insisted the '8' hours was for the entire Association number of owners combined, which it is NOT. And, I was limite to ONE HOUR, then told to make another apointment for another HOUR in the future. Not ALL materials were provided. There should be language to prevent such shennanigans in the future.

**SB-2624**

Submitted on: 2/4/2018 6:15:29 AM

Testimony for CPH on 2/7/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lourdes Scheibert	Condo Owner	Support	No

Comments:

**SB-2624**

Submitted on: 2/4/2018 12:14:25 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leimomi Khan	Hawaiian Affairs Caucus, DPH	Support	Yes

Comments:

Strongly encourage passage of SB2624. I am a condominium homeowner and know first hand that certain records are conveniently lost, especially records that document problems/incidents reported by homeowners. Thus, especially appreciate the amendments being made that establish penalty when anyone knowingly makes any false certificate, entry or memorandum upon any of the books or records of any managing agent or association or when knowingly altering, destroying, mutilating or concealing any books or records of a managing agent or association, under section 514A-85(d) or 514B-154(i). I believe that these amendments would result in Property Management Companies and AOAO's establishing policies and procedures to assure that books or records are properly maintained and secured.

**SB-2624**

Submitted on: 2/5/2018 1:56:36 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anne Anderson	Anderson Lahne & Fujisaki LLP	Oppose	No

## Comments:

Dear Senator Rosalyn H. Baker, Chair and Senator Jill N. Tokuda, Vice Chair and Members of the Committees:

I OPPOSE S.B. 2624 for a number of reasons. Allowing owners to use up to 40 hours of association time per year reviewing proxies, tally sheets, ballots, owners' check-in lists, and certificates of election without being required to pay for the time is unreasonable. These 40 hours would include expenses for such things as having an employee of the managing agent present while the originals of such documents are being reviewed by an owner. It is hard to conceive why an owner would need to spend up to 40 hours reviewing such documents. A review of this nature can usually be conducted in a couple of hours, at most. The current 8-hour cap on time before owners are required to pay reasonable administrative costs is more than reasonable. A 40-hour cap could be used by owners, who are angry with their associations, to make repeated requests to inspect the same documents as a form of harassment.

The requirement that proxies and ballots be kept for 5 years, regardless of whether a meeting is contested, is unreasonable. Many associations pay a fee to store documents. The 5-year requirement will result in needless expense for uncontested meetings. If a longer period is desired, it should be tied to contested meetings.

The provisions creating new crimes for the destruction of documents is not needed. Furthermore, the manner in which these provisions are drafted could have unintended consequences. For example, HRS Section 514B-154(h) provides that a managing agent retained by an association may dispose of the records of the association which are more than five years old, except for tax records, which shall be kept for seven years, without liability if the managing agent first provides the board of the association affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board within sixty days, which notice shall include an itemized list of the records proposed to be disposed. The proposed amendment to HRS Section 514B-154(i) provides that it shall be a crime of forgery to destroy documents without making an exception for documents that may be lawfully destroyed under the previous subsection (e.g., HRS Section 514B-154(h)). Furthermore, some documents are modified from time to time in the ordinary course of business. For example, minutes of Board meetings might be amended by a board at a subsequent meeting when reviewed

and minutes of annual association meetings might be amended by the membership at a subsequent meeting when reviewed. Yet, the new sections do not recognize this or any other exceptions.

Sincerely,

M. Anne Anderson

**SB-2624**

Submitted on: 2/5/2018 2:03:19 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. Ireland Koftinow		Oppose	No

## Comments:

Dear Senator Rosalyn H. Baker, Chair and Senator Jill N. Tokuda, Vice Chair and Members of the Committees:

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and minutes of annual association meetings might be amended by the membership at a subsequent meeting when reviewed. Yet, the new sections do not recognize this or any other exceptions.

Sincerely,

Paul A. Ireland Koftinow



**SB-2624**

Submitted on: 2/5/2018 10:26:48 PM

Testimony for CPH on 2/7/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Glanstein		Oppose	No

Comments:

**I oppose SB2624 for several reasons.**

(A) First, amendments to Chapter 514A are not necessary when (1) it is being repealed as of the end of the year and (2) Chapter 514B applies to condominium association meetings, voting, proxies, and records (all of which are in Part VI of Chapter 514B). See HRS §514B-22.

(B) The "free" use of up to 40 hours of time per year is unreasonable. Somebody is going to pay for that. In order to protect the sanctity of the records, a representative of the property management company has to accompany anybody who looks at records. This cost is passed to the entire association and obviously to all of its members.

(C) The 5 year requirement for maintaining the proxy and ballot records serves no useful purpose. It is generally understood (and may have legal precedent in the Taniguchi vs. King Manor case in Hawaii - check with legal) that a subsequent election nullifies any errors in the previous election.

The burden should be on the testifiers in favor of this legislation to demonstrate a compelling state interest in protecting the consumer at the expense of all association owners.

S.B. 2624 – set for hearing – 2/7/18 at 10:00 a.m.

Dear Senator Rosalyn H. Baker, Chair and Senator Jill N. Tokuda, Vice Chair and Members of the Committees:

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Sincerely,

Primrose K. Leong-Nakamoto (S)  
Board of Director