

SB2625

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Association of Apartment Owners; Board of Directors; Managing Agent; Conflict of Interest

Description: Requires officers and directors of associations of apartment owners to disclose activities that could reasonably be construed as a conflict of interest and cease the activity or withdraw from office. Prohibits attorneys from representing both the board and managing agent of the association. Prohibits board members from purchasing units at foreclosure sales resulting from the association's lien for unpaid assessments. Prohibits associations from contracting with service providers that have a close connection to a board member or officer of the association. Prohibits any person who contracts to provide services to the association or participates in the association's operation from owning more than fifteen per cent of the units in a project or from purchasing property that is subject to a lien by the association. Prohibits any employee of an association or person who contracts to provide goods or services to an association from soliciting, receiving, or accepting any undisclosed fee, compensation, commission, or gratuity from a third party who provides goods or services or solicits to provide goods or services to the association.

Companion:

Package: None

Current Referral: CPH

Introducer(s): GALUTERIA, SHIMABUKURO, Baker, S. Chang, Dela Cruz, Inouye, K. Kahele, Kidani, Nishihara, Tokuda, Wakai

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**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Friday, February 23, 2018
10:00 a.m.

TESTIMONY ON SENATE BILL NO. 2625, RELATING TO CONDOMINIUMS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Nikki Senter, and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). Thank you for the opportunity to testify on S.B. 2625. The Commission offers the following comments.

S.B. 2625 sets forth conditions and prohibitions for condominium association board members, condominium managing agents, attorneys, and other persons doing business with an association.

The Hawaii condominium law, Hawaii Revised Statutes ("HRS") chapter 514B, is based upon the philosophy of self-governance by condominium unit owners with minimal government intervention. S.B. 2625 amends this basic philosophy by expanding the number of prohibitions and conditions and increasing board members' exposure to risk while potentially discouraging unit owners from volunteering for the board.

In addition, S.B. 2625 appears redundant, as existing law maintains the self-governing nature of condominium associations and protects condominium unit owners from conflicts of interest and self-dealing with minimal government intrusion.

Thank you for the opportunity to comment on S.B. 2625.



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



February 22, 2018

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

Re: Testimony in opposition to
SB2625 RELATING TO CONDOMINIUMS
Hearing: Friday, Feb. 23, 2018, 10 a.m., Conf. Rm. #229

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

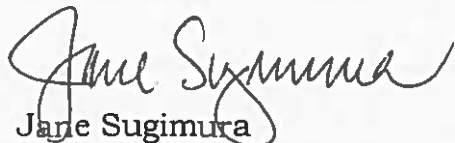
I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA).

HCCA opposes this bill for the following reasons:

- HRS§514-106 and §414D-149 already deal with issues relating to conflicts of interest which are referred to in subparagraphs (g), (i), (j),(k) and (l) of the bill. Accordingly, new legislation is unnecessary. HRS §514-106 provides that all board members have fiduciary duties to the association. HRS §414D-149 provides that “. . . a director will discharge his duty (i) in good faith; (ii) consistent with his duty of loyalty to the association; (iii) with the care an ordinary prudent person in a like position would exercise under similar circumstances **and** (iv) in a manner the director believes to be in the best interest of the association.” The existing laws already provide a basis for owners to remove board members if they breach their fiduciary duty or otherwise “misbehave”.
- Subparagraph (g) contains a provision that allows the board to remove an officer or director and this is inconsistent with existing laws and most association governing documents that provide that **owners** (and not the board) have the authority to remove directors from the board.
- With respect to subparagraph (h), since the managing agent is the agent for the Association, it doesn't make sense to require the board and the managing agent to be represented by separate counsel (unless there is a conflict). Also it is a standard provision in management contracts that the Association will indemnify the managing agent (so long as the agent is acting within its scope of authority or in the interest of the Association).

SB2625 Relating to Condominiums
Senate Committee on Commerce, Consumer Protection & Health
February 22, 2018
Page 2 of 2

For these reasons, HCCA believes that this bill is unnecessary and respectfully requests that you defer action on this bill. Thank you for the opportunity to testify on this matter.

A handwritten signature in black ink, appearing to read "Jane Sugimura". The signature is fluid and cursive, with the first name "Jane" written in a larger, more prominent script than the last name "Sugimura".

Jane Sugimura
President

SB-2625

Submitted on: 2/21/2018 12:08:43 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Resident Manager	Testifying for Honolulu Tower AOAO	Oppose	No

Comments:

At It's February 5th, 2018 meeting; the Board of Directors of the Honolulu Tower Association of Apartment Owners (AOAO), voted unanimously to oppose Senate Bill 2625 relating to condominiums. Among our oppositions are that it would deprive AOAOs from using qualified contractors and vendors, which are few enough to start with in Hawaii. It also deprives AOAOs from having experts in the services that they need from serving on their boards. It should be sufficient for directors to declare their connections with vendors as required by current law.

Honolulu Tower AOAO

SB-2625

Submitted on: 2/21/2018 12:08:43 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Resident Manager	Testifying on behalf of Honolulu Tower AOAO	Oppose	No

Comments:

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Honolulu Tower AOAO

TESTIMONY OF MICHAEL TANOUE

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Senator Rosalyn Baker, Chair
Senator Jill Tokuda, Vice Chair

Friday, February 23, 2018
10:00 a.m.

SB 2625

Chair Baker, Vice Chair Tokuda, and members of the Committee on Commerce, Consumer Protection, and Health, my name is Michael Tanoue, counsel for the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** the following proposed amendment to Hawaii Revised Statutes § 514B-107, which is set forth on page 3, lines 13-14, of SB 2625:

(h) No attorney shall simultaneously represent the board and the managing agent retained by the association.

This provision is too broad when applied in situations where a *liability claim is asserted or a lawsuit is filed* against both the association and its managing agent. In many liability situations, the claim or lawsuit is tendered to the insurer that issued a commercial general liability (CGL) policy to the association. Most CGL policies include as a defined insured the person or organization while acting as the association's "real estate manager" (called the "managing agent" in the bill). CGL insurers currently have the discretion under their policy contract to appoint the same defense counsel to simultaneously represent both the association and the managing agent where no conflict of interest exists between those parties. This discretion reduces costs and

streamlines the defense of the association and managing agent. The bill would eliminate the option of joint representation and potentially increase costs to CGL insurers and, ultimately, to the association insureds.

The proposed amendment (paragraph (h)) is also unnecessary because attorneys are governed by their own Code of Professional Responsibility, which requires them to decline simultaneous representation of both the board and the managing agent in situations where a conflict of interest exists.

Therefore, the Hawaii Insurers Council requests that this Committee delete the above-quoted paragraph (h) from SB 2625.

The Hawaii Insurers Council takes no position on the other aspects of the bill.

Thank you for the opportunity to testify.



P.O. Box 976
Honolulu, Hawaii 96808

February 21, 2018

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

Re: Testimony in OPPOSITION of SB 2625 RELATING TO CONDOMINIUMS
Hearing: Friday, Feb. 23, 2018, 10 a.m., Conf. Rm. #229

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

This testimony is submitted on behalf of the Community Associations Institute ("CAI"). CAI opposes SB 2625, *in its current form*, for reasons stated herein.

A Managing Agent is simply that "an agent" of the association under the direction of its board of directors. In most litigation plaintiff's attorneys sue everyone. The Managing Agent typically has an indemnification clause from the Association for its actions. By allowing a single attorney to represent both the Association and the Managing Agent is commonplace and economical and preferred by insurance companies. Consider a "slip and fall" case where in fact the association and managing agent are sued. SB2625 would require two attorneys to be retained that either the association's members would have to pay or potentially affect insurance premiums. Under current procedures separate counsel are already provided for when there is a conflict of interest under an attorney's canon of ethics. This provision will have a negative impact on the cost for the board to manage the association.

Currently HRS 514B provides adequate requirements for disclosure of conflicts of interest. SB 2625 fails to adequately define a conflict of interest and created unnecessary prohibitions. As an example, a small 20-unit unit association needed to replace its roof. The board went to bid and the costs were high. A director who happened to be a roofer, offered to do

Honorable Roy Takumi
Honorable Linda Ichiyama
February 3, 2018
Page 2 of 2

install a new roof at his cost, a substantial savings. All was disclosed and properly reviewed by the association's lawyer and roof expert. The board should not be restricted on making routine business decisions that benefit the association. Often management companies offer additional services such as maintenance or site management that is approved by the board. Artificial impediments to allowing a board to make necessary business decisions. It should be noted that according to public records there have been zero mediation requests in the past two years asserting a conflict of interest issue. The language in SB 2625 fails to accurately describe a conflict of interest and such terminology such as "reasonably construed" woefully deficient.

Finally, the proposed language that allows a board to remove a director is contrary to other state laws and opens up the potential for abuse.

SB 2625 seems to address a problem that does not exist. CAI opposes SB 2625, in its current form.

Community Associations Institute, by

Richard Emery

For its Legislative Action Committee

SB-2625

Submitted on: 2/21/2018 8:36:24 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	Support	No

Comments:

This measure seeks to provide owners with necessary protections against malfeasance and misfeasance, but lacks enforceability. Thus, HRS514B should be amended as shown below:

§514B-65 Investigative powers. If the commission has reason to believe that any person is violating or has violated this part, part V, section 514B-103, 514B-107, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of all relevant parties. For purposes of this examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker in accordance with chapter 467 and the rules of the commission, and shall make the records accessible to the commission upon reasonable notice and demand.

§514B-66 Cease and desist orders. In addition to its authority under sections 514B-67 and 514B-68, whenever the commission has reason to believe that any person is violating or has violated this part, part V, section 514B-103, 514B-107, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, or the rules of the commission adopted pursuant thereto, it may issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law or rules charged in the complaint. If the commission finds that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.

§514B-68 Power to enjoin. Whenever the commission believes from satisfactory evidence that any person has violated this part, part V, section 514B-103, 514B-107,

514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, or the rules of the commission adopted pursuant thereto, it may conduct an investigation of the matter and bring an action against the person in any court of competent jurisdiction on behalf of the State to enjoin the person from continuing the violation or doing any acts in furtherance thereof.

§514B-69 Penalties. (a) Any person who violates or fails to comply with this part, part V, section 514B-103, 514B-107, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, or section 514B-154.5, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000, or by imprisonment for a term not exceeding one year, or both. Any person who violates or fails to comply with any rule, order, decision, demand, or requirement of the commission under this part, part V, section 514B-103, 514B-107, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, or section 514B-154.5, shall be punished by a fine not exceeding \$10,000.

(b) In addition to any other actions authorized by law, any person who violates or fails to comply with this part, part V, section 514B-103, 514B-107, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, or the rules of the commission adopted pursuant thereto, shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense.

SB-2625

Submitted on: 2/21/2018 10:40:48 PM

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	Support	No

Comments:

Seniors are especially vulnerable to financial mismanagement and abuse. This measure seeks to protect Seniors and other condo owners against malfeasance and misfeasance, asserting that conflicts of interests which may have harmful consequences must be exposed.

However, this measure lacks enforceability; thus, HRS514B should be amended as shown below:

§514B-65 Investigative powers. If the commission has reason to believe that any person is violating or has violated this part, part V, section 514B-103, 514B-107, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of all relevant parties. For purposes of this examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker in accordance with chapter 467 and the rules of the commission, and shall make the records accessible to the commission upon reasonable notice and demand.

§514B-66 Cease and desist orders. In addition to its authority under sections 514B-67 and 514B-68, whenever the commission has reason to believe that any person is violating or has violated this part, part V, section 514B-103, 514B-107, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, or the rules of the commission adopted pursuant thereto, it may issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law or rules charged in the complaint. If the commission finds that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person, within thirty days after service upon the

person of the report or order, may obtain a review thereof in the appropriate circuit court.

§514B-68 Power to enjoin. Whenever the commission believes from satisfactory evidence that any person has violated this part, part V, section 514B-103, 514B-107, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, or the rules of the commission adopted pursuant thereto, it may conduct an investigation of the matter and bring an action against the person in any court of competent jurisdiction on behalf of the State to enjoin the person from continuing the violation or doing any acts in furtherance thereof.

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(b) In addition to any other actions authorized by law, any person who violates or fails to comply with this part, part V, section 514B-103, 514B-107, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, section 514B-154.5, or the rules of the commission adopted pursuant thereto, shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense.

CHARLES E. PEAR, JR.
ATTORNEY AT LAW

DIRECT #S:
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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. 2625
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 S.B. 2625.

We have the following comments:

1. Proposed Section (g) requires that directors and officers having any kind of conflict of interest be removed from office.

Section 514B-106 of the Condominium Act provides for a period of developer control, as follows:

(d) The declaration may provide for a period of developer control of the association, during which a developer, or persons designated by the developer, may appoint and remove the officers and members of the board.

While there has been considerable discussion about the nature of the obligations of developer-appointed directors to a condominium association and its members, the fact that there will be conflicts is widely recognized. For example, in the Restatement (Third) of Property – Servitudes, the Official Comments state in pertinent part:

Conflicts of interest are inherent in the developer's role while it retains control of the association.

Notwithstanding the potential for conflicts, the Hawaii Condominium Act, along with laws in various other states, and in model laws such as the Uniform Condominium Act and the Uniform Common Interest Ownership Act, recognize the need for a developer control period. S.B. 2625, however, would effectively eliminate any possibility of a developer control period since it requires that conflicted directors and officers be removed from office.

Even after the developer control period ends, conflicts will remain. As stated by Wayne Hyatt in Condominium and Homeowner Association Practice: Community Association Law (3rd Ed., 2000):

The court [in *In re: Croton River Club*, 52 F.3d 41 (2d Cir. 1995)]
* * * pointed out that there would always be some conflict of
interest because the directors are owners affected by board
decisions.

A considerable number of cases have attempted to address the standards for testing the propriety of board actions, and there seems to be no clear solution for this difficult problem arising from the complexity of community associations. One thing is clear, however: none of the statutes or cases propose to require the removal of all officers and directors with a conflict of interest. Instead, efforts have been made to establish a framework for dealing with conflicts while allowing the association to continue to operate.

For example, Section 414D of the Hawaii Nonprofit Corporations Act requires disclosure of certain information in the event that a director has a conflict of interest. It further provides:

A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsection (b).

The salient point here is that the Nonprofit Corporations Act does not require conflicted directors to resign. Instead, it establishes rules and procedures for operation of the corporation notwithstanding conflicts. In light of the recognition that virtually no condominium association directors are completely free of conflicts of interest, the approach advanced in SB 2625 is not an attractive or practical alternative.

2. Proposed Section (h) prohibits an attorney from representing both the board and the managing agent retained by the association. While this seems appropriate on its face, the plaintiff in a lawsuit may name the association, its directors, and the managing agent as co-defendants. When the defense is tendered to the association's insurer, it is common for the

insurer to name a single lawyer or law firm to defend the association, its directors and the managing agent. This would be prohibited under the proposal advanced in S.B.2625, and ultimately could lead to higher insurance premiums.

3. Subsection (j) prohibits an association from entering in to a contract with a service provider owned or operated by someone who has a material financial relationship with a director or officer of the association.

Most time share condominiums are now being developed under a brand licensing arrangement. As a result, the projects are branded as a Starwood, Hyatt, Marriott, Wyndham, etc., resort, and the property must be managed to brand standards.

Typically, the developer of the project has an affiliated company that serves as the managing agent for the time share condominium, and it is responsible for operating and maintaining the project in conformance with brand standards. This is critical for the owners, because failure to comply with brand standards will result in loss of the brand. For a consumer who bought a time share interest in, say, a Disney or Marriott project, this would be a major disappointment in the consumer's expectations. The proposal advanced by S.B.2625 would prohibit such an arrangement.

4. Similar concerns exist with respect to the other provisions of S.B. 2625. For example, it is common for a time share developer to own more than 15% of the time share interests in a project, but proposed subsection (k) may raise concerns with this. Likewise, the prohibition on undisclosed fees and gratuities, while seemingly innocuous, could require disclosure of a time share developer's internal accounting allocations of development expenses.

For these and other reasons, ARDA Hawaii respectfully opposed S.B. 2625.

Thank you for your kind consideration of the foregoing 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

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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. 2625
Hearing on February 23, 2018, 10:00 a.m.
Conference Room 229

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ARDA Hawaii opposes S.B. 2625.

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While there has been considerable discussion about the nature of the obligations of developer-appointed directors to a condominium association and its members, the fact that there will be conflicts is widely recognized. For example, in the Restatement (Third) of Property – Servitudes, the Official Comments state in pertinent part:

P. O. Box 2800 • Honolulu, Hawai'i 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawai'i 96813
Telephone: (808) 529-7300 • Fax: (808) 524-8293 • E-mail: info@m4law.com

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Chair, Vice Chair and Members,
Senate Committee on Commerce,
Consumer Protection, and Health
February 22, 2018
Page 3

insurer to name a single lawyer or law firm to defend the association, its directors and the managing agent. This would be prohibited under the proposal advanced in S.B.2625, and ultimately could lead to higher insurance premiums.

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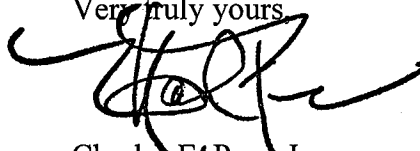
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4. Similar concerns exist with respect to the other provisions of S.B. 2625. For example, it is common for a time share developer to own more than 15% of the time share interests in a project, but proposed subsection (k) may raise concerns with this. Likewise, the prohibition on undisclosed fees and gratuities, while seemingly innocuous, could require disclosure of a time share developer's internal accounting allocations of development expenses.

For these and other reasons, ARDA Hawaii respectfully opposed S.B. 2625.

Thank you for your kind consideration of the foregoing 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-2625

Submitted on: 2/20/2018 3:21:56 PM

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

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

Comments:

I support this measure because condo associations need a return to decency devoid of illegitimate affiliations or acquisitions.

SB-2625

Submitted on: 2/20/2018 7:47:07 PM

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 am shocked at this overreach. We have enough trouble getting volunteers, we are volunteers, not paid, to serve on the board. This will scare away home owners. HRS514B already has rules regarding conflict of interest. We don't need to be told that we may have to resign from a board if there is a perceived conflict. Legislators have conflicts all the time, yet there is no law requiring you to vacate your seat.

These proposals deprive associations from using qualified contractors and vendors. They also deprive associations from having experts in the services that they need from serving on their boards. It should be sufficient for directors to declare their connections with vendors as required by current law. It is a breach of their fiduciary responsibility if they do not declare a conflict and recuse themselves from voting. The proposal seems to be intended to punish all AOAOs for perceived abuses by very few.

Furthermore, I fail to see why board members should be prohibited from purchasing units at foreclosure sales resulting from the association's lien for unpaid assessments. Anyone should be able to purchase these units. This is discrimination and could be a restraint upon trade. This is at a foreclosure sale, not a secret deal. This bill is a death knell for associations and their boards.

Lynne Matusow

SB-2625

Submitted on: 2/20/2018 9:11:57 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
John Morris	Individual	Oppose	Yes

Comments:

My name is John Morris and I am testifying against on SB 2625. I spent three years as estates first condominium specialists from 1988- 91. Since then I have practised as an attorney representing associations.

It is not clear why this bill is necessary. It seems to presuppose that widespread corruption exists in the management and operation of condominium associations when, in fact, there appears to be little evidence to support that supposition. In that way, this bill seems to be very similar to bills passed last year.

For example, last year the legislature passed a law stating that no tenant could serve on a condominium association's board of directors. There were no widespread reports of tenants serving on the board, but the law was changed anyway.

The single example that was apparently the basis for the law was a condominium in which one of three buildings comprising the condominium was owned by a church. Understandably, the church wanted to have representatives on the board. Understandably, some of the church's employees lived in the church-owned building and served on the board as representatives of the church . Since they were tenants, once the law changed they were barred from serving on the board. Of course, if they moved out of the building, they were then eligible to serve on the board, simply by moving out. Nothing else had changed.

A far broader unintended consequence is creating more widespread problems. For example, if, for estate planning purposes, an apartment owner puts his apartment into the name of an LLC or LLP that he/she owns and continues to live in the apartment, the apartment owner becomes a tenant of his own LLC or LLP. That is not an uncommon practice nowadays.

At that point, the apartment owner cannot serve on the board because he is a tenant of his own LLC or LLP. If, however, the apartment moves out of his own apartment, he is miraculously transformed into someone who can serve on the board because he can then become a representative of his own LLC or LLP. Since he does not live in the unit, he is not a tenant any more.

This bill has the potential to cause even more problems because it tries to address far more issues than tenancy. Nevertheless, the bill still has no apparent proven basis for the changes it proposes to make to the law.

It might be different if there was evidence that widespread corruption of the type listed in this bill was going. Nevertheless, there appears to be no such evidence or insufficient evidence to justify changing the law for every condominium in the state.

Thank you for this opportunity to testify.

John Morris

SB-2625

Submitted on: 2/21/2018 10:03:37 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Philip Nerney	Individual	Oppose	No

Comments:

I oppose SB 2625. The testimony submitted on behalf of HCCA contains a good explanation of the basis for opposition.

SB-2625

Submitted on: 2/21/2018 1:01:19 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Christine Russo	Individual	Support	No

Comments:

SB-2625

Submitted on: 2/21/2018 1:03:49 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
romel pasaoa	Individual	Support	No

Comments:

I strongly support this bill

SB-2625

Submitted on: 2/21/2018 9:49:02 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Manali-Leonardo	Individual	Support	No

Comments:

An attorney who represents AOAO board members should *not* also be able to work for the same property management organization that also represents and manages the same AOAO. This is a major conflict of interest, e.g. This is an actual true example that happened to a condo owner... if several board members vote and order the property management company attorney to send an owner of a condo a letter that accuses said owner of unsubstantiated "crimes", the board has violated the condo owner of due process, AND has caused the AOAO unnecessary fees from the attorney (by writing and sending the letter). Thanks, Nancy Manali-Leonardo

SB-2625

Submitted on: 2/21/2018 10:14:56 PM

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

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

Comments:

Presently, condo associations are 'easy picking' for con-artists and 'management' companies preying upon condo owners, and, renters. Please pass this long overdue bill. The state has been willfully negligent for decades by not protecting citizens residing in condo complexes. Our legislative Committee on Consumer Protection should be doing just what the title implies, 'protecting' consumers, not voting down bills to protect us. It should not be known as the Committee on Consumer 'Exploitation'.

Please pass this good bill.

SB-2625

Submitted on: 2/22/2018 9:35:29 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,

We are opposed to this Bill as it is again another attempt to "fix" something that is not broken. Conflicts of interest are nothing new, and are already clearly defined by law.

The other provisions of this Bill are also unnecessary and have not been a problem to date. So we respectfully request that this Bill be deferred. Thank you.

Christian Porter

February 22, 2018

TO: Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair

FROM: Glenn T. Stockton II
Past and Present Board Member
Various Hawaii Condominium Associations and Timeshare Associations

DATE: Friday, February 23, 2018
Conference Room 229
10:00 a.m.

RE: **SB 2625 Relating To Condominiums.**

Aloha Chair, Vice-Chair and Members of the Committee:

This testimony is submitted **IN OPPOSITION** to Senate Bill 2625 for the following reasons:

It is already extremely difficult to find owners willing to voluntarily serve as board members and officers of a condominium association. The amendments proposed in Senate Bill 2625 would effectively scare off all owners from doing so in the future because these amendments effectively give other owners the ability to peer deep into the private life of a board member and question virtually every aspect of that board member's familial and business relationships. These amendments encourage such outrageous behavior by utilizing open-ended words and phrases such as "any activity that may reasonable be construed to be a conflict of interest", "a person who has a material financial interest with a member of the board or an officer", "a close relative of a board member or an officer". These amendments appear to be geared more towards punishing those who voluntarily service as board members and officers. This is most evident when you consider how these amendments go so far as to punish **all** board members and officers by prohibiting them from purchasing a condominium unit at a **public** foreclosure sale. This is unacceptable!

Lastly, I concur with and join in the testimony submitted on behalf of ARDA Hawaii regarding the many negative legal implications that such broad amendments will have on condominium management.

For the foregoing reasons I ask that Senate Bill 2625 be **DEFERRED**.

Thank you for your consideration.

February 22, 2018

TO: Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair

FROM: Kevin J Blair
President – Sands of Kahana

DATE: Friday, February 23, 2018
Conference Room 229
10:00 a.m.

RE: SB 2625 Relating To Condominiums.

Aloha Chair, Vice-Chair and Members of the Committee:

This testimony is submitted **IN OPPOSITION** to Senate Bill 2625 for the following reasons:

My experience with condominium owners show that most owners already do not want to voluntarily serve as board members and officers because of the time commitments and weighty obligations that come with such service. The amendments proposed in Senate Bill 2625 will only serve to scare off those few owners that have been willing to serve in the past!

For the foregoing reasons I ask that Senate Bill 2625 be **DEFERRED**.

Thank you for your consideration.

SB-2625

Submitted on: 2/22/2018 10:43:01 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Lourdes Scheibert	Individual	Support	No

Comments:

SB-2625

Submitted on: 2/22/2018 4:39:50 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 am opposing SB2625 for several reasons with the major reason for opposition is that it restricts the AOA from performing all of their duties in a timely and professional manner as well as restricting the AOA's attorneys from performing their duties on behalf of the ownership and it prohibits individuals from becoming an owner by restricting their ability to purchase multiple units and otherwise enjoying the fruits of their success as well as violating their civil rights. Mahalo.

warmest aloha

A. Denys