HAWAII STATE ENERGY OFFICE
STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

SCOTT J. GLENN
CHIEF ENERGY OFFICER

235 South Beretania Street, 5TH Floor, Honolulu, HI 96813 | energy.hawaii.gov

(808) 587-3807

Testimony of
SCOTT J. GLENN, Chief Energy Officer

before the
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Wednesday, February 12, 2020
2:05 PM
State Capitol, Conference Room 329

In SUPPORT of
HB 2161
RELATING TO CONDOMINIUMS.

Chair Takumi, Vice Chair Ichiyama and Members of the Committee, the Hawaii State Energy Office (HSEO) supports HB 2161, which would enable condominium owners to install solar or wind energy devices on roofs and other areas where the entire building is reserved as a limited common element appurtenant in all units in the building.

The HSEO has received calls from condominium owners wishing to place solar energy devices on condominium roofs in accordance with HRS 196-7, which states in part that,

> "…no person shall be prevented by any covenant, codicil, contract, or similar binding device…from installing a solar energy device on any…townhouse that the person owns. Any provision in any lease, instrument or contract contrary to the intent of this section shall be void and unenforceable."

As binding as the law might seem, some condominium associations have denied permission to install renewable energy devices. This bill may help overcome condominium associations' resistance and pave the way for the installation of clean energy devices atop condominiums and townhouses, bringing Hawaii closer to attaining its clean-energy and decarbonization goals.

Thank you for the opportunity to testify.

HB-2161
Submitted on: 2/11/2020 9:00:32 AM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark McKellar	Law Offices of Mark K. McKellar, LLLC	Support	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I support H.B. 2161 for the following reasons:

Section 2 - HRS Section 514B-32:

The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 3 - HRS Section 514B-107:

1. Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. A tenant was defined as a person who occupies a dwelling who is not also an owner of a dwelling unit in the same condominium. This could be construed as preventing persons who would otherwise be qualified to serve on the board from serving simply because they occupy a dwelling unit. For example, if the sole member of a member-managed LLC occupies a unit owned by the LLC, that member might be held ineligible to serve on the board simply because the member occupies a unit. HB 2161 will serve to clarify that the

term “tenant” shall not apply to persons who are qualified to serve under HRS Section 514B-107(a). It also clarifies who is qualified to serve in the event that a unit is owned by a corporation, partnership, or limited liability company and limits the reference to “other person authorized to act” to legal entities not specifically referenced.

Section 4 - HRS Section 514B-123:

Condominium associations are required by law to mail to all owners statements submitted by owners indicating the owner’s qualifications to serve on the board or reasons for wanting to receive proxies. Owners sometimes make defamatory remarks in their statements which could expose associations, and their boards, directors, officers, agents, attorneys, and representatives who may be involved in the mail out of statements, to potential liability. This provision will provide protection from defamation claims in those instances.

This is a far better option than allowing associations to edit statements or refuse to mail them out because any editing or refusal to mail will undoubtedly result in disputes between associations and owners. Providing immunity from liability for performing the statutorily required act of mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B 140 clarifies that subsection (c) applies to additions and alterations by unit owners and not associations, which is consistent with Section 514A 89, the original source of Section 514B 140. The amendment to HRS Section 514B 140(c)(1) and (c)(2) are for clarification because as written, these provisions are subject to more than one interpretation.

HRS Section 140(d) allows associations to install solar and wind energy devices on common elements, but requires the approval of the owners of units to which limited common elements are appurtenant before solar and wind energy devices may be installed on the limited common elements. This has created a problem for condominium projects that have multiple buildings and each building is a limited common element

appurtenant to all of the units in the building because it prohibits the association from installing solar and wind energy devices, such as solar panels, on any portion of the building, including the roof, without the approval of 100% of the owners in the building. This bill will make it possible for these condominium associations to install solar and wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, as drafted.

Respectfully submitted,

Mark McKellar

HB-2161
Submitted on: 2/10/2020 1:43:24 PM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Support	No

Comments:

We support this Bill with the amendments suggested by CAI LAC.

House of Representatives
Committee on Consumer Protection and Commerce
Wednesday, February 12, 2020
2:05 p.m.
Conference Room 329

To: Chair Takumi
Re: HB2161, relating to Condominiums

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

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups. We focus on policies and practices which can impact the well-being of seniors and our community.

Kokua Council holds an annual Policy and Legislative Priorities Community Meeting attended by representatives from over 50 organizations* to present their priorities. At the end of the 2019 meeting, a poll of participants indicated strong support for the protection of condominium owners' rights.

I am also leader of Hui `Oia'i'o, informally known as "COCO," a coalition of over 300 property owners--mostly seniors--from over 150 common-interest associations. And I write this testimony on their behalf.

HB2161 appears to be a Frankenstein measure cobbling many proposed but unrelated amendments to the Statute into one. For that reason, **we cannot support this measure** and will comment on each section of this measure.

We support the first section which amends HRS514B-32 as it appears to re-state what is found in many associations' Declarations and is commonly presumed to be law.

We find the second section which amends HRS514B-107 to be inadequate as it does not provide specificity as to when that board member must be identified as a qualified owner: At the time of candidacy for the board? At the time of installation as a director? During the term of directorship? When disqualification is discovered?

While we support First Amendment Rights and are aware of Boucher v 1111 East Chestnut Condominium Association which conclusion is supportive of First Amendment rights, we object to the section which seeks to amend HRS514B-123 as it may appear to encourage bad behavior (e.g., slander, libel, defamation, etc.).

We oppose the section which seeks to amend HRS514B-140 because of lack of clarity although HB2161 is introduced as a means to greater clarity. The terms used to define "nonmaterial" are subjective and thus unclear: Who determines what is valuable? Who determines what "detracts from appearance"? Who decides if one is "deprived of enjoyment"?

Additionally, we oppose this amendment to HRS514B-140 because it refers to all additions and alterations to a condominium, and not just the installation of solar devices in common or limited common areas.

Aloha,

Lila Mower

*AARP - Advocacy Director, Altres Home Care, Alzheimer's Association, Arcadia Family Of Companies, Caring Across Generations, Catholic Charities, Child And Family Services, Common Cause Hawaii, Community Alliance On Prisons (CAP), Condo 411, Drug Policy Forum, Elderly Affairs Division, City and County Of Honolulu (EAD), Executive Office On Aging (State Of Hawaii), Faith Action (fka Faith Action For Community Equity), Foster Grandparent Program, Grassroot Institute Of Hawaii, Hawaii Disability & Communication (DCAB), Hawaii Alliance Of Non-Profits (HANO), Hawaii Appleseed Center For Law And Economic Justice, Hawaii Alliance Of Retired Americans (HARA), Hawaii Community Foundation, Hawaii Family Caregiver's Coalition (HFCC), Hawaii Disability Rights Center, Hawaii Long Term Care Ombudsman, Hawaii Meals On Wheels, Helping Hands Hawaii, Hui `Oia`i`o, Institute For Human Services (IHS), KAHEA, Kokua Kalihi Valley, Kupuna Caucus, Kupuna Education Center at KCC, Lanakila Meals On Wheels, League Of Women Voters, Manoa Cottage Care Home, Mediation Center Of The Pacific, National Alliance On Mental Illness (NAMI), Native Hawaiian Legal Group, Osher Lifelong Learning Institute, Pacific Alliance To Stop Slavery (PASS), Partners In Care, Phocused, Policy Advisory Board For Elderly Affairs (PABEA), Pono Action, Project Dana, Public Health Nursing, Sierra Club, Senior Companion Program, Times Pharmacy, UH Center On Aging, and the State of Hawaii Governor's Coordinator on Homelessness.

HAWAII LEGISLATIVE ACTION COMMITTEE
community ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

Honorable Roy M. Takumi, Chair
Honorable Linda Ichiyama, Vice Chair
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB 2161 SUPPORT INTENT

Dear Chair Takumi, Vice Chair Ichiyama and Committee Members:

The Community Associations Institute ("CAI") supports the intent of HB 2161 to clarify condominium law.

Current law provides for amendment of a condominium declaration with approval by "at least sixty-seven per cent of the common interest" holders. Condominium associations often found it difficult to achieve the 75% threshold for amendment that prevailed prior to the enactment of the current threshold.

HB 2161 clarifies in Section 2 that 67% is the threshold that remains in effect for the amendment of *declarations*, in the absence of affirmative action by association members to require a higher percentage. HB 2161 does not address by-laws. The Committee may wish to consider maintaining uniformity with respect to the amendment of both declarations and by-laws.

Consistent with the intention to clarify condominium law, the Committee may also wish to consider omitting the words "at least" at page 4, line 5. The words "at least" become superfluous and potentially confusing if the goal is to clarify that the threshold for amendment *is* 67% "unless the declaration is amended by the owners to require a higher percentage."

Section 3 provides useful clarity with respect to eligibility for service on a condominium board. CAI offers no comment on that language.

Section 4 appears to be intended to relieve a condominium association and its representatives from potential liability for defamatory communications that it may be obliged to publish pursuant to section 514B-123(i). To the extent that an association is compelled to publish material authored by others over whom it lacks control, such relief is indicated.

Within that context, it may be more apt to relieve an association and its representatives from tort liability generally because publication under compulsion may expose to associations to torts (like, perhaps, invasion of privacy) that are unnamed in HB 2161. That said, HB 2161 provides immunity "for any action taken with respect to any statement submitted by an owner[,]" (emphasis added), which may be overbroad.

A question arises as to Section 5, in that if "The installation of solar energy devices as defined in section 196-7" is to apply (see, page 10 at lines 10-11), then the application of the definition of "solar energy device" in section 514B-140(c) becomes unclear. It is also worth considering that "townhouse" is defined differently in section 196-2 as compared to how that term is defined in section 514B-140. A necessarily more restrictive definition of townhouse applies in the condominium context.

CAI therefore suggests that the Committee consider amendments to HB 2161 if it is to move forward.

Very truly yours,

Philip Nerney

Philip Nerney

HAWAI'I STATE ASSOCIATION OF PARLIAMENTARIANS
LEGISLATIVE COMMITTEE
P. O. BOX 29213
HONOLULU, HAWAI'I 96820-1613
E-MAIL: STEVEGHI@GMAIL.COM

February 11, 2020

Honorable Rep. Roy M. Takumi, Chair
Honorable Rep. Linda Ichiyama, Vice-Chair
House Committee on Consumer Protection and Commerce (CPC)
Hawaii State Capitol, Room 329
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in SUPPORT OF HB2562 with amendment; Hearing Date: February 12, 2020 at 2:05 p.m. in House conference room 329; sent via Internet

Dear Rep. Takumi, Chairman; Rep. Linda Ichiyama, Vice-Chair; 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 1,800 meetings in 37 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2004.

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

This testimony is presented in SUPPORT OF HB2562 with a couple of minor amendments.

Summary of Bill:

This Bill proposes to clarify and resolve several practical issues that have occurred in the past few years with both Condominium and Planned Community Association (PCA) meetings. It proposes:

Section 1 (PCAs):

(a) Clarify the board member resignation process;
(b) Clarify the filling of interim vacancies by board members to be similar to the filling of interim vacancies in Condominium Property Regimes;
(c) Clarify that the right to vote is reserved to the owners.

Section 2:

(a) Clarify the resignation process for board members in Condominium Associations;

(b) Clarify that notice will be a requirement for removals in Planned Community Associations.

I will address each issue by topic.

A. Resignation Process

Both Condominium Property Regimes and PCAs are required to use the most current edition of Robert's Rules of Order Newly Revised (11th ed.) ("*Robert's Rules*")

Robert's Rules, p. 291 states in part, "If a member who has accepted an office, committee assignment, or other duty finds that he is unable to perform it, he should submit his resignation. A resignation is submitted in writing, addressed to the secretary or appointing power; alternatively, it may be submitted during a meeting either orally or in writing.* By submitting a resignation, the member is, in effect, requesting to be excused from a duty. The chair, on reading or announcing the resignation, can assume a motion 'that the resignation be accepted.'" *[External footnote omitted.]*

Unfortunately, this has proven to be insufficient to clearly define if a resignation has actually been presented.

For example, in one meeting, a board member, apparently angry at some activity stated, "I quit" and walked out. The board then immediately filled the vacancy and found out later that the member meant that he quit a committee. In another case, the member stated later that he only quit the meeting. The "I quit" statement by a non-native speaker may have related to a specific issue rather than a position on the board.

The "I quit" has also been used to take advantage of a contentious situation and eliminate a minority member from the board, even if the minority member's intention was entirely different.

Another case occurred when a director said that he would resign without stating the position he was resigning from. This left it up to the board at the next meeting.

Another case occurred when a director said that he was resigning and the president decided that he wouldn't accept the resignation. This led to ambiguity and uncertainty regarding the composition of the board.

The proposed change would clarify that a resignation at the meeting would need to be confirmed at the same meeting.

We suggest avoidance of the word, "accept" because service on the board of directors is voluntary.

The board should always have the option to confirm the resignation. Regardless of whether the president wishes to permit it, the board should also have the option to confirm a resignation. I have been asked to consider wording that would allow the board to vote to confirm the resignation should the president refuse to confirm it.

Suggested alternate wording for Section 2 on page 2, lines 13-15 is:

"(1) Orally at a meeting of the board of directors, either confirmed by majority vote at the same meeting, or confirmed verbally or in writing by the presiding officer at the same meeting; or"

B. Filling of Interim Vacancies

Several years ago, the law was amended to limit the filling of vacancies by the board of directors of a condominium association to the next annual or properly noticed special association meeting (2014 Act 189, §4). In our view, this has worked well, ensuring that the filling of vacancies by the board of directors is an **interim process** and that all board appointments are accountable to the condominium ownership.

PCA boards have taken different positions on the filling of vacancies, depending upon the individuals involved. It is further aggravated with bylaws containing ambiguous phrases or even the omission of specific wording for filling vacancies. This has lead to different interpretations, depending on the political situation, property management company, and board of directors.

This proposal is to provide the same accountability and protection for the process with PCAs that currently exists with condominium associations.

C. Clarification of the Right to Vote in Planned Community Association Meetings

The bill proposes to clarify that votes cast at a PCA meeting are by owners ot their proxyholders.

Several developers have created association documents that created a community association **form of electoral college**. The owners of various sub-associations would elect a Voting Member and the Voting Member would have authority to amend the documents as well as elect the governing board of directors.

This process has already been challenged in a case against Kaanapali Golf Estates. The 3 arbitrators ruled unanimously that this system had the effect of depriving owners of the right to vote for directors and the design feature was unconscionable.

That particular association was ordered to conduct elections directly by vote of the owners. Since it was an arbitration it didn't affect other similar PCAs.

A similar governance situation exists with Kehalani on Maui[1] and Sea Country on Oahu[2]. In the case of Sea Country on Oahu, they simply ignored the process because it was "impractical" and are currently attempting to amend their documents.

I suggest, as a matter of policy, that the legislature consider removing any doubt that owners or their proxyholders are the voters for official association action rather than surrendering that vote to Voting Members who act as an "electoral college".

D. Clarification that notice is a requirement for removals in Planned Community Associations

The bill proposes to clarify that **notice** should be a requirement for removal of one or more directors at a PCA meeting.

Condominium Associations have a defined voting requirement of a majority of the common interest for removal with slight adjustments for mixed use representation on the board. The same model won't work with PCAs because they may have thousands of owners.

Some PCAs don't even have a vote requirement for a successful removal of one or more directors. It would then default to a majority vote or possibly a majority of the ownership that is present at the meeting. The complexity increases if they're incorporated. A separate bill (HB2563) proposes to correct that issue.

There have been different legal opinions regarding whether a removal motion may be introduced by a homeowner at an annual meeting. HRS §421J-3.5 addresses a proposal to remove a director. If a board wishes to allow the removal, then they can contact one Hawaii law firm. If they wish to prohibit the removal, then they can contact another Hawaii law firm. This is unacceptable from a policy perspective.

The liberal interpretation of HRS §421J-3.5 would allow a large temporary majority to show up at an association meeting such as Mililani Town Association or Waikoloa Village Association and surprise everybody by removing the entire board. Both of these associations have a mail ballot but they still conduct an annual meeting. Mililani Town Association's May 2, 1968 bylaws don't reference removal so a large temporary and angry majority could prospectively remove the entire board. Since there are separate legal opinions on this type of issue, I suggest that it be clarified through the legislative process.

The bill proposes to require previous notice of any proposed removal of one or more directors. It also obligates the association to place it on the notice if a request is made

---

[1] Document Numbers 95-040251 and 96-136396 recorded in Land Court.

[2] Document Numbers 2919955 and 2003-075374 recorded in Land Court and the Bureau of Conveyances

by any member. This would add an element of fairness to the process and place all owners on notice if a removal procedure was anticipated.

There are a few suggested housekeeping amendments to Section 3 (page 4). **The board or president usually appoints committees in the bylaws.** Committees shouldn't be referenced in the change to HRS §421J–3.5 because the appointment to committees is rarely related to the business of an association's annual meeting. There's also a minor typographical error. suggest page 4, lines 3-8 be amended to read:

"(c) To remove a member of the board **~~[or any committee]~~**, a proposal to remove the member of the board shall be included in the notice of the meeting. The proposal shall be included **~~[on]~~** **in** the notice upon written request of any association member made at least fourteen days prior to the distribution of the notice for the meeting."

We ask that you pass the bill with minor amendments.

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

Sincerely,

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

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

Aloha, my name is Chandra Kanemaru, Board Officer and Director of Country Club Village, Phase 2 that consists of 469 apartments in Salt Lake.

I support H.B. 2161 for the following reasons:

Section 2 - HRS Section 514B-32:

The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 3 - HRS Section 514B-107:

HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. A tenant was defined as a person who occupies a dwelling who is not also an owner of a dwelling unit in the same condominium. This could be construed as preventing persons who would otherwise be qualified to serve on the board from serving simply because they occupy a dwelling unit. For example, if the sole member of a member-managed LLC occupies a unit owned by the LLC, that member might be held ineligible to serve on the board simply because the member occupies a unit. HB 2161 will serve to clarify that the term "tenant" shall not apply to persons who are qualified to serve under HRS Section 514B-107(a). It also clarifies who is qualified to serve in the event that a unit is owned by a corporation, partnership, or limited liability company and limits the reference to "other person authorized to act" to legal entities not specifically referenced.

Section 4 - HRS Section 514B-123:

Condominium associations are required by law to mail to all owners statements submitted by owners indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies. Owners sometimes make defamatory remarks in their statements which could expose associations, and their boards, directors, officers, agents, attorneys, and representatives who may be involved in the mail out of statements, to potential liability. This provision will provide protection from defamation claims in those instances.

This is a far better option than allowing associations to edit statements or refuse to mail them out because any editing or refusal to mail will undoubtedly result in disputes between associations and owners. Providing immunity from liability for performing the statutorily required act of mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B 140 clarifies that subsection (c) applies to additions and alterations by unit owners and not associations, which is consistent with Section 514A 89, the original source of Section 514B 140. The amendment to HRS Section 514B 140(c)(1) and (c)(2) are for clarification because as written, these provisions are subject to more than one interpretation.

HRS Section 140(d) allows associations to install solar and wind energy devices on common elements, but requires the approval of the owners of units to which limited common elements are appurtenant before solar and wind energy devices may be installed on the limited common elements. This has created a problem for condominium projects that have multiple buildings and each building is a limited common element appurtenant to all of the units in the building because it prohibits the association from installing solar and wind energy devices, such as solar panels, on any portion of the building, including the roof, without the approval of 100% of the owners in the building. This bill will make it possible for these condominium associations to install solar and wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, as drafted.

Respectfully submitted,

Chandra R. N. Kanemaru

AOAO Secretary/Board Director of Country Club Village, Phase 2
3054 Ala Poha Place, Honolulu, HI 96818

HB-2161
Submitted on: 2/10/2020 3:23:49 PM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dawn Smith	Individual	Support	Yes

Comments:

I applaud this clarification of the definition of 'owner 'and 'tenant' and support passage of this bill.

I have no opinion for or against the other two sections.

So if anyone is amending HB2161 - my testimony is to please leave Section 3 intact. I remember the hullabaloo in the newspaper at Waiea on this same subject which cost the AOAO and other parties a lot of money to litigate the legislature's intention. Passage of this will have now clarified same for future parties. Well done!

Thank you, Dawn Smith

HB-2161
Submitted on: 2/10/2020 7:36:17 PM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
R Laree McGuire	Individual	Support	No

Comments:

HB-2161
Submitted on: 2/10/2020 7:40:21 PM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Support	Yes

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I support H.B. 2161 for the following reasons:

Section 2 - HRS Section 514B-32:

The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 3 - HRS Section 514B-107:

HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. A tenant was defined as a person who occupies a dwelling who is not also an owner of a dwelling unit in the same condominium. This could be construed as preventing persons who would otherwise be qualified to serve on the board from serving simply because they occupy a dwelling unit. For example, if the sole member of a member-managed LLC occupies a unit owned by the LLC, that member might be held ineligible to serve on the board simply because the member occupies a unit. HB 2161 will serve to clarify that the term "tenant" shall not apply to persons who are qualified to serve under HRS Section 514B-107(a). It also clarifies who is qualified to serve in the event that a unit is owned by a corporation, partnership, or limited liability company and limits the reference to "other person authorized to act" to legal entities not specifically referenced.

Section 4 - HRS Section 514B-123:

Condominium associations are required by law to mail to all owners statements submitted by owners indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies. Owners sometimes make defamatory remarks in their statements which could expose associations, and their boards, directors,

officers, agents, attorneys, and representatives who may be involved in the mail out of statements, to potential liability. This provision will provide protection from defamation claims in those instances.

This is a far better option than allowing associations to edit statements or refuse to mail them out because any editing or refusal to mail will undoubtedly result in disputes between associations and owners. Providing immunity from liability for performing the statutorily required act of mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B 140 clarifies that subsection (c) applies to additions and alterations by unit owners and not associations, which is consistent with Section 514A 89, the original source of Section 514B 140. The amendment to HRS Section 514B 140(c)(1) and (c)(2) are for clarification because as written, these provisions are subject to more than one interpretation.

HRS Section 140(d) allows associations to install solar and wind energy devices on common elements, but requires the approval of the owners of units to which limited common elements are appurtenant before solar and wind energy devices may be installed on the limited common elements. This has created a problem for condominium projects that have multiple buildings and each building is a limited common element appurtenant to all of the units in the building because it prohibits the association from installing solar and wind energy devices, such as solar panels, on any portion of the building, including the roof, without the approval of 100% of the owners in the building. This bill will make it possible for these condominium associations to install solar and wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, as drafted.

Respectfully submitted,

M. Anne Anderson

HB-2161
Submitted on: 2/10/2020 9:43:55 PM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
mary freeman	Individual	Support	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I support H.B. 2161 for the following reasons:

Section 2 - HRS Section 514B-32:

The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 3 - HRS Section 514B-107:

HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. A tenant was defined as a person who occupies a dwelling who is not also an owner of a dwelling unit in the same condominium. This could be construed as preventing persons who would otherwise be qualified to serve on the board from serving simply because they occupy a dwelling unit. For example, if the sole member of a member-managed LLC occupies a unit owned by the LLC, that member might be held ineligible to serve on the board simply because the member occupies a unit. HB 2161 will serve to clarify that the term "tenant" shall not apply to persons who are qualified to serve under HRS Section 514B-107(a). It also clarifies who is qualified

to serve in the event that a unit is owned by a corporation, partnership, or limited liability company and limits the reference to “other person authorized to act” to legal entities not specifically referenced.

Section 4 - HRS Section 514B-123:

Condominium associations are required by law to mail to all owners statements submitted by owners indicating the owner’s qualifications to serve on the board or reasons for wanting to receive proxies. Owners sometimes make defamatory remarks in their statements which could expose associations, and their boards, directors, officers, agents, attorneys, and representatives who may be involved in the mail out of statements, to potential liability. This provision will provide protection from defamation claims in those instances.

This is a far better option than allowing associations to edit statements or refuse to mail them out because any editing or refusal to mail will undoubtedly result in disputes between associations and owners. Providing immunity from liability for performing the statutorily required act of mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B 140 clarifies that subsection (c) applies to additions and alterations by unit owners and not associations, which is consistent with Section 514A 89, the original source of Section 514B 140. The amendment to HRS Section 514B 140(c)(1) and (c)(2) are for clarification because as written, these provisions are subject to more than one interpretation.

HRS Section 140(d) allows associations to install solar and wind energy devices on common elements, but requires the approval of the owners of units to which limited common elements are appurtenant before solar and wind energy devices may be installed on the limited common elements. This has created a problem for condominium projects that have multiple buildings and each building is a limited common element appurtenant to all of the units in the building because it prohibits the association from installing solar and wind energy devices, such as solar panels, on any portion of the

building, including the roof, without the approval of 100% of the owners in the building. This bill will make it possible for these condominium associations to install solar and wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, as drafted.

Respectfully submitted,

Mary S. Freeman

HB-2161
Submitted on: 2/10/2020 10:08:42 PM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara J. Service	Individual	Support	No

Comments:

Please support passage of this bill to make necessary clarifications and updates in condo law.

Barbara J. Service MSW (retired)

President, Tropic Gardens I Association of Apartment Owners

HB-2161
Submitted on: 2/10/2020 10:34:55 PM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kate Paine	Individual	Oppose	No

Comments:

Most opposed to the amendment in HRS514B-140 because it encompacss all additions/alterations to a condo-- not just installation of solar devices in common areas..

HB-2161
Submitted on: 2/10/2020 10:50:38 PM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Larry Veray	Individual	Support	No

Comments:

The right thing to do for our citizens is to pass this bill in all fairness to them when they make bad judgement in parking their vehicle or becomes victims of towing services.

HB-2161
Submitted on: 2/11/2020 9:24:54 AM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Beverly FeBenito	Individual	Support	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I support H.B. 2161 for the following reasons:

Section 2 - HRS Section 514B-32:

The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 3 - HRS Section 514B-107:

1. Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. A tenant was defined as a person who occupies a dwelling who is not also an owner of a dwelling unit in the same condominium. This could be construed as preventing persons who would otherwise be qualified to serve on the board from serving simply because they occupy a dwelling unit. For example, if the sole member of a member-managed LLC occupies a unit owned by the LLC, that member might be held ineligible to serve on the board

simply because the member occupies a unit. HB 2161 will serve to clarify that the term “tenant” shall not apply to persons who are qualified to serve under HRS Section 514B-107(a). It also clarifies who is qualified to serve in the event that a unit is owned by a corporation, partnership, or limited liability company and limits the reference to “other person authorized to act” to legal entities not specifically referenced.

Section 4 - HRS Section 514B-123:

Condominium associations are required by law to mail to all owners statements submitted by owners indicating the owner’s qualifications to serve on the board or reasons for wanting to receive proxies. Owners sometimes make defamatory remarks in their statements which could expose associations, and their boards, directors, officers, agents, attorneys, and representatives who may be involved in the mail out of statements, to potential liability. This provision will provide protection from defamation claims in those instances.

This is a far better option than allowing associations to edit statements or refuse to mail them out because any editing or refusal to mail will undoubtedly result in disputes between associations and owners. Providing immunity from liability for performing the statutorily required act of mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B 140 clarifies that subsection (c) applies to additions and alterations by unit owners and not associations, which is consistent with Section 514A 89, the original source of Section 514B 140. The amendment to HRS Section 514B 140(c)(1) and (c)(2) are for clarification because as written, these provisions are subject to more than one interpretation.

HRS Section 140(d) allows associations to install solar and wind energy devices on common elements, but requires the approval of the owners of units to which limited common elements are appurtenant before solar and wind energy devices may be installed on the limited common elements. This has created a problem for condominium

projects that have multiple buildings and each building is a limited common element appurtenant to all of the units in the building because it prohibits the association from installing solar and wind energy devices, such as solar panels, on any portion of the building, including the roof, without the approval of 100% of the owners in the building. This bill will make it possible for these condominium associations to install solar and wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, as drafted.

Respectfully submitted,

Beverly FeBenito

HB-2161
Submitted on: 2/11/2020 10:12:13 AM
Testimony for CPC on 2/12/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bradford Lee Hair	Individual	Support	No

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I support H.B. 2161 for the following reasons:

Section 2 - HRS Section 514B-32:

The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 3 - HRS Section 514B-107:

HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. A tenant was defined as a person who occupies a dwelling who is not also an owner of a dwelling unit in the same condominium. This could be construed as preventing persons who would otherwise be qualified to serve on the board from serving simply because they occupy a dwelling unit. For example, if the sole member of a member-managed LLC occupies a unit owned by the LLC, that member might be held ineligible to serve on the board simply because the member occupies a unit. HB 2161 will serve to clarify that the term "tenant" shall not apply to persons who are qualified to serve under HRS Section 514B-107(a). It also clarifies who is qualified to serve in the event that a unit is owned by a corporation, partnership, or limited liability company and limits the reference to "other person authorized to act" to legal entities not specifically referenced.

Section 4 - HRS Section 514B-123:

Condominium associations are required by law to mail to all owners statements submitted by owners indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies. Owners sometimes make defamatory remarks in their statements which could expose associations, and their boards, directors, officers,

agents, attorneys, and representatives who may be involved in the mail out of statements, to potential liability. This provision will provide protection from defamation claims in those instances.

This is a far better option than allowing associations to edit statements or refuse to mail them out because any editing or refusal to mail will undoubtedly result in disputes between associations and owners. Providing immunity from liability for performing the statutorily required act of mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B 140 clarifies that subsection (c) applies to additions and alterations by unit owners and not associations, which is consistent with Section 514A 89, the original source of Section 514B 140. The amendment to HRS Section 514B 140(c)(1) and (c)(2) are for clarification because as written, these provisions are subject to more than one interpretation.

HRS Section 140(d) allows associations to install solar and wind energy devices on common elements, but requires the approval of the owners of units to which limited common elements are appurtenant before solar and wind energy devices may be installed on the limited common elements. This has created a problem for condominium projects that have multiple buildings and each building is a limited common element appurtenant to all of the units in the building because it prohibits the association from installing solar and wind energy devices, such as solar panels, on any portion of the building, including the roof, without the approval of 100% of the owners in the building. This bill will make it possible for these condominium associations to install solar and wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, as drafted.

Respectfully submitted,

Bradford Lee Hair

Sandra-Ann Y.H. Wong
Attorney at Law, a Law Corporation

1050 Bishop Street, #514
Honolulu, Hawaii 96813

TESTIMONY IN OPPOSITION TO HB 2161
Before the Committee on Consumer Protection & Commerce
on Wednesday, February 12, 2020 at 2:05p.m.
in Conference Room 329

Aloha Chair Takumi, Vice Chair Ichiyama, and members of the Committee:

I am writing in **opposition to HB2161**.

I have been a condominium owner in Hawaii for the last 28 years and I have served both past and present on my condominium boards.

I am opposed to HB2161 regarding Section 3, Section 4, and the overall genesis of this bill.

Section 3 proposes to provide an amendment to the definition of "tenant" as it relates to those qualified to serve as a member of the board in the event a unit is owned by a corporation. Although I understand the intent of the amendment, I am concerned that it goes too far and is contrary to the intent when HRS 514(b) was originally adopted. It was never the intent of HRS 541(b) to allow tenants on AOAO's Board. It is simply wrong for tenants to be setting policy and rules for owners and making decisions as to how the AOAO money is spent, when they are not members of the AOAO and have "no skin in the game." Renters and owners simply have different interests.

The proposed amendment in Section 3 vastly broadens the definition of "tenant" by now allowing "vendees under an agreement of sale, trustee of a trust which owns a unit, or an officer <u>of a corporation, a partner in a general partnership or limited liability partnership, a general partner of a limited partnership, a member of a member-managed limited liability company, a manager of a manager-managed limited liability company,</u> or other person authorized to act on behalf of any other legal entity <u>that is not referenced in this section,</u> which owns a unit."

This proposed laundry list provides multiple opportunities for abuse. I am especially concerned about the catch all phase "or other person authorized to act on behalf of any other legal entity" This phase is undefined and could lead to a tenant with "no skin in the game" being permitted to serve on the Board.

Section 4 proposes to provide the "association, board of directors, association director, officer, agent, or attorney or other association representative" complete immunity for any "damages for libel, slander, or other defamation of character of person for any action taken with respect to any statement by an owner" when requesting proxies, regardless of whether the above knew that "such statement was libelous, slanderous, or otherwise defamatory." I oppose this proposed amendment because the association, board of directors, association director, officer, agent, or attorney or other association representative should have **a duty of care** to ensure that such libelous, slanderous, or otherwise defamatory statements not be included in the letters. Such libelous, slanderous, or otherwise defamatory statements if permitted in letters to be sent out to AOAO owners could permanently destroy the reputation and life of innocent parties.

Finally, I am concerned that this bill is **not** a product of a collaborative process with the relevant stakeholders. It is my understanding that the proposals of this bill were not shared with the relevant stakeholders. Personally, I was made aware of the Proponent's concern about the definition of "tenant" on or about the Spring of last year. I reached out and agreed to meet and invited two other stakeholders. We finally met in September 2019. The Proponent at the meeting promised to circulate a draft. I did not receive a draft until the day the Proponent needed to provide the language for drafting on January 15, 2020 and at that time, I only received the language to Section 3. Thus, I appreciated the Proponent sending it, it provided me with very little time to comment. Thus, I would respectfully request that this bill be held to allow the stakeholders to meet and work out these important issues that will affect thousands of condo owners in Hawaii.

Thank you for the opportunity to provide Testimony in Opposition.

HB-2161
Submitted on: 2/11/2020 12:57:18 PM
Testimony for CPC on 2/12/2020 2:05:00 PM

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

Comments:

Dear Representative Takumi, Chair, Representative Ichiyama, Vice Chair, and Members of the Committee:

I *SUPPORT* H.B. 2161 for the following reasons:

Section 2 - HRS Section 514B-32:

The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 3 - HRS Section 514B-107:

HRS Section 514B-107(b) was amended in 2017 to clarify that tenants may not serve on an association's board. A tenant was defined as a person who occupies a dwelling who is not also an owner of a dwelling unit in the same condominium. This could be construed as preventing persons who would otherwise be qualified to serve on the board from serving simply because they occupy a dwelling unit. For example, if the sole member of a member-managed LLC occupies a unit owned by the LLC, that member might be held ineligible to serve on the board simply because the member occupies a unit. HB 2161 will serve to clarify that the term "tenant" shall not apply to persons who are qualified to serve under HRS Section 514B-107(a). It also clarifies who is qualified to serve in the event that a unit is owned by a corporation, partnership, or limited liability company and limits the reference to "other person authorized to act" to legal entities not specifically referenced.

Section 4 - HRS Section 514B-123:

Condominium associations are required by law to mail to all owners statements submitted by owners indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies. Owners sometimes make defamatory remarks in

their statements which could expose associations, and their boards, directors, officers, agents, attorneys, and representatives who may be involved in the mail out of statements, to potential liability. This provision will provide protection from defamation claims in those instances.

This is a far better option than allowing associations to edit statements or refuse to mail them out because any editing or refusal to mail will undoubtedly result in disputes between associations and owners. Providing immunity from liability for performing the statutorily required act of mailing out owner statements is a far better solution.

Section 5 - HRS Section 514B-140:

The amendment to HRS Section 514B 140 clarifies that subsection (c) applies to additions and alterations by unit owners and not associations, which is consistent with Section 514A 89, the original source of Section 514B 140. The amendment to HRS Section 514B 140(c)(1) and (c)(2) are for clarification because as written, these provisions are subject to more than one interpretation.

HRS Section 140(d) allows associations to install solar and wind energy devices on common elements, but requires the approval of the owners of units to which limited common elements are appurtenant before solar and wind energy devices may be installed on the limited common elements. This has created a problem for condominium projects that have multiple buildings and each building is a limited common element appurtenant to all of the units in the building because it prohibits the association from installing solar and wind energy devices, such as solar panels, on any portion of the building, including the roof, without the approval of 100% of the owners in the building. This bill will make it possible for these condominium associations to install solar and wind energy devices without having to obtain 100% approval. This is consistent with the purpose of this section and the overall goal increasing the use of clean energy.

For these reasons, I urge the committee to pass H.B. 2161, as drafted.

Respectfully submitted,

Paul A. Ireland Koftinow

House of Representatives
Committee on Consumer Protection and Commerce
Wednesday, February 12, 2020
2:05 p.m.
Conference Room 329

To: Chair Takumi

Re: HB2161, relating to Condominiums

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

I am Lourdes Scheibert, volunteer director of Kokua Council, one of Hawaii's oldest advocacy groups. I am a participant of Hui `Oia'i'o, informally known as "COCO," a coalition of over 300 property owners--mostly seniors--from over 150 common-interest associations.

HB2161 is cramming several unrelated amendments to the Statue into one confusing document. I cannot support this measure with emphasis on changes to HRS 514B-140 Additions to and alterations of condominium with section (c) that could have unintended consequences.

Although the reading is intended for solar devices, would the change "made by the owner" include all common area and limited common area of the entire property?

I oppose this amendment to HRS514B-140 because it refers to all additions and alterations to a condominium, and not just the installation of solar devices in common or limited common areas.

> **§514B-140 Additions to and alterations of condominium.** (a) No unit owner shall do any work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, as reasonably determined by the board.
>
> (c) Subject to the provisions of the declaration, nonmaterial additions to or alterations of the common elements or units, ~~including~~ made by the owner, without limitation, additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the exclusive use of the unit, shall require approval only by the board, which shall not unreasonably withhold the approval, and such percentage, number, or group of unit owners as may be required by the declaration or bylaws; provided that the installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.

In accordance to the following documents, The Board of Directors approving alterations to any part of an existing building is subject to compliance with the jurisdiction of the City & County Building Planning & Permitting. Including, 514B and related Condominium project documents of the Declaration, By-Laws and House Rules and the original as built condominium plans.

HRS 514B and
[§514B-6] Supplemental county rules governing a condominium property regime. No later than July 1, 2022, the counties shall adopt supplemental rules governing condominium property regimes, including agricultural lands that are held in condominium property regimes, established under this chapter in order to implement this program; provided that any of the supplemental rules adopted shall not conflict with this chapter or with any of the rules adopted by the commission to implement this chapter. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

[§514B-112] Condominium community mutual obligations. (a) All unit owners, tenants of owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to this chapter are subject to this chapter and to the declaration and bylaws of the as-sociation adopted pursuant to this chapter. All agreements, decisions, and determinations lawfully made by the association in accor-dance with the voting percentages established in this chapter, the declaration, or the bylaws are binding on all unit owners. Each unit owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the covenants, conditions, and restrictions set forth in the declaration, the bylaws, and the house rules adopted pursuant thereto. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, main-tainable by the managing agent, resident manager, or board on behalf of the association or, in a proper case, by an aggrieved unit owner. [L 2004, c 164, pt of §2; am L 2005, c 93, §7

CITY AND COUNTY-2003 IBC Existing Buildings:

Chapter 34 EXISTING STRUCTURES [EB] SECTION 3401 GENERAL 3401.1 Scope. The provisions of this chapter shall control the alteration, repair, addition and change of occupancy of existing structures. **Exception:** Existing bleachers, grandstands and folding and telescopic seating shall com-ply with ICC 300-02

*__3401.2 Maintenance.__ Buildings and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices or safeguards which are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's designated agent shall be responsible for the maintenance of buildings and structures. To determine compliance with this subsection, the building official shall have the authority to require a building or structure to be reinspected. The

requirements of this chapter shall not provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures.

3401.3 Compliance with other codes. Alterations, repairs additions and changes of occupancy to existing structures shall comply with the provisions for alterations, repairs, additions and changes of occupancy in the *Phoenix Fire Code, Arizona State Plumbing Code, Chapter 39 of the Phoenix City Code, International Mechanical Code, International Residential Code and the National Electrical Code.*

Than-you,

Lourdes Scheibert
920 Ward Ave #6D
Honolulu, Hawaii 96814

Email: lourdes10@me.com

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

DATE: Wednesday, February 12, 2020
TIME: 2:05 pm
PLACE: Conference Room 329

Chair Takumi and Members of the Committee,

My name is John Morris and I am an attorney who works with condominium associations and other homeowner associations. I am testifying in partial support of the changes proposed by HB 2161.

Amendment of the condominium declarations. This is a worthwhile change because confusion has arisen concerning the percentage required to amend a condominium declaration under Ch 514B. One point of confusion is whether the declaration can be amended by written consent or only at a meeting of the members. HB 2161 clarifies that issue.

A second problem is that the current wording of section 514B-32 suggest that if a condominium declaration still retains chapter 514A's 75% approval requirement for amendments, the declaration can only be amended with 75% approval. That interpretation is possible even though chapter 514B states that 67% approval is enough to amend a condominium declaration. HB 2161 confirms that 67% owner approval will be enough to amend the declaration unless the owners actually amend the declaration to require a higher percentage. That should eliminate the confusion on that point.

Serving on a condominium board. The changes to clarify who can represent an entity that owns a condominium unit are worthwhile and take into account modern practice. Since many condominium units are owned by entities, those entities need to be able to appoint someone to represent their interests on the board, because, unlike individuals, as entities they cannot physically serve on the board.

In contrast, there seems to be no clear reason to retain the prohibition against a tenant serving on the board. Since that restriction was passed several years ago, all it has done is generate unnecessary legal disputes and confusion.

For example, under the current law, the prohibition on tenants serving on the board has created some ridiculous situations. 1) Someone who owns an entity that owns a unit can appoint himself or herself to serve on the board for the entity as long as he or she does not live in the unit, i.e., is not a tenant of the entity that owns the unit. In contrast, if he or she does live in the unit, he or she is a tenant of the unit owner – namely, the entity – and cannot serve on the board under the literal wording of the current law. Nevertheless, if that same person were to move out of the building, he or she would be instantly qualified to serve on the board because he or she would no longer be a tenant!

Admittedly, the proposed change to the law will eliminate most of that problem. It will do so by making the definition of tenant so broad that almost every tenant there is will be able to serve on the board as long as he or she is appointed by an entity that owns the unit. Under those circumstances, retaining the prohibition on tenants serving on the board serves no real purpose.

Moreover, someone who lives in the building, even as a tenant, is likely to be much more familiar with the issues facing residents of the building than someone who simply shows up for board meetings and then goes home to another location. Therefore, the committee should eliminate the prohibition against tenants serving on the board.

Limiting Liability For Association Representatives For Owner Statements. The law requires the Association to send out statements from owners who are running for the board or soliciting proxies for an annual meeting. This change is worthwhile because the board and other Association representatives should not have to censor statements sent out by owners who are running for the board or soliciting proxies for an annual meeting. In other words, if an owner includes a defamatory statement in the owner's mailed out statement for the annual meeting, that should be the owner's responsibility, not the responsibility of the association or its directors, officers, managing agents, et cetera. Thus, this change will put the burden and the blame on the person making the statement, not the association or other association representatives.

Solar energy. It is worthwhile clarifying that the board can adopt reasonable rules and requirements for the installation of solar energy devices. Therefore, the first amendment to section 514B-140 is worthwhile.

The amendments relating to the installation of solar energy devices on limited common elements are not completely clear in their intent. The amendments seem to state that the board may *not* install solar energy devices on individually-owned limited common elements but can install them on the roofs of buildings when the roofs are limited common elements of all the units in the building. If that is the intent, perhaps that section can be clarified, or the legislative history can clearly reflect that legislative intent.

Thank you for this opportunity to testify.

John Morris

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

February 11, 2020

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

Re: Testimony in support of
HB2161 RELATING TO CONDOMINIUMS
Hearing: Wednesday, Feb. 12, 2020, 2:05p.m., Conf. Rm. #329

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

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

HCCA generally supports this bill but suggests a revision for Section 4 of the bill relating to the written statement that candidates for board elections are allowed to submit for circulation to owners in the condominium project. HCCA has no problem with the proposed new language to protect boards of directors and their agents and representatives from claims of defamation for the contents of these statements; however, we suggest that language be inserted at the end of paragraph (1)(B) to specify that that the candidate statements not include references to third parties, e.g., ". . . The statement, which shall be limited to black text on white paper, . . .indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies, provided that such statements shall not contain any names or reference to third parties; . . ."

Thank you for the opportunity to testify on this matter.

Jane Sugimura
President

HB-2161
Submitted on: 2/12/2020 11:32:27 AM
Testimony for CPC on 2/12/2020 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Wong	Individual	Oppose	No

Comments:

I am opposed to HB2161. The change in definition of a tenant is too broad. Tenants typically have different objectives and won't take into account market value, maintenance fees, and other important factors that an owner would. I'm also opposed to the section regarding libel, slander, and defamation of character. As a condo owner and current board member I see first hand where these types of letters have been sent to hurt the reputation of board members just to obtain proxies. People need to be held accountable and this language appears to give them a free pass. Thank you.