



February 22, 2020

VIA WEB TRANSMITTAL

Hearing Date: Tuesday, February 25, 2020

Time: 2:00 p.m.

Place: Conference Room 325

Committee on Judiciary  
House of Representatives, the 30th Legislature  
Regular Session of 2020

Re: Community Associations Institute's **Testimony in support of HB 2563**

Dear Chair Lee, Vice Chair San Buenaventura and Committee members:

I am a member of the Hawaii Chapter of the Community Associations Institute Legislative Action Committee ("CAI"). We represent the condominium and community association industry and submit this testimony in support of HB 2563, as amended and as addressed in the testimony to be submitted by Steve Glanstein to this Committee prior to the 2/25/20 hearing.

Based on the foregoing, we respectfully submit that HB 2563 should be passed out of Committee with amendments. Thank you for your time and consideration.

Sincerely yours,

/s/ R. Laree McGuire

R Laree McGuire

CAI LAC Hawaii



**HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS  
LEGISLATIVE COMMITTEE  
P. O. Box 29213  
HONOLULU, HAWAII 96820-1613  
E-MAIL: [STEVEGHI@GMAIL.COM](mailto:STEVEGHI@GMAIL.COM)**

February 24, 2020

Honorable Rep. Chris Lee, Chair  
Honorable Rep. Joy A. San Buenaventura, Vice-Chair  
House Committee on Judiciary (JUD)  
Hawaii State Capitol, Room 325  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Testimony in SUPPORT OF HB2563 HD1 with Amendments; Hearing Date:  
February 25, 2020 at 2:00 p.m. House conference room 325; sent via Internet**

Dear Rep. Lee, Chairman; Rep. San Buenaventura, Vice-Chair; Committee Members,

Thank you for the opportunity to provide testimony on this bill. I have a prior obligation and may not be at the hearing in time to provide verbal testimony.

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 governing documents and meetings of numerous condominiums, cooperatives, and Planned Community Associations.

This testimony is presented in **SUPPORT OF HB2563 HD1 with Amendments.**

**Summary of Bill:**

The Bill proposed to remove the applicability of the cumulative voting restrictions and the removal provisions for board members from the Nonprofit Corporation Act Chapter 414D as they apply to Planned Community Associations (PCAs).

There were concerns expressed by several stakeholders in the CPC hearing. Therefore, we collaborated with the stakeholders to make a revised draft.

**The suggested revised draft is attached for your consideration.** We have worked together to improve the wording by clarifying the removal procedure without disturbing the current process that applies to many of Hawaii's nonprofit corporations, and limiting the filling of vacancies by the board.

A brief summary of the changes (rather than a recapitulation of the entire bill) is provided below.

### **Current HD2 Section 1:**

This is unchanged from HB2563 HD1; it clarifies that HRS §414D-114 titled “Cumulative voting for directors” doesn't apply to PCAs governed by Chapter 421J. A separate section (below) will cover this topic.

### **Current HD2 Section 2:**

This is unchanged from HB2563 HD1; it clarifies that HRS §414D-138 titled “Removal of directors elected by members or directors” doesn't apply to PCAs governed by Chapter 421J. A separate section (below) will cover this topic.

### **Recommended New HD2 Section 3:**

1. A section titled, “§421J-\_\_\_\_ Cumulative voting for directors” was added, similar to HRS §514B-124.5 for condominiums with the added reference in subsection (c) to a new removal section. This makes the cumulative voting procedures for election of directors consistent with the condominium statute, Chapter 514B.
2. A section titled, “§421J-\_\_\_\_ Removal of directors elected by members or directors” was added, similar to HRS §414D-138, with a few differences:
  - a. The section clarifies that the cumulative voting protection provision relates to protecting the director elected by cumulative voting at the meeting at which the removal is proposed.
  - b. The section at subsection (e) provides for a petition process for notice of a removal so that owners by petition may have the removal placed on the notice of the regular or special association meeting. Otherwise, directors may not be removed at the meeting.

### **Recommended New HD2 Section 4:**

The removal wording at a PCA meeting in HRS §421J-3.5(c) is removed since the process is now detailed in the proposed “HD2 Section 3.”

A new HRS §421J-3.5(e) has been added. HD2 Section 3 requires of directors to be included in the notices of meetings. Currently, there is no advance posting requirement for associations where boards don't intend to use association funds to distribute proxies that include the election of directors. The posting requirement has been expanded to require posting of notice of the board's intent to distribute written notice of an association meeting. This will protect owners' rights to petition for removal and have the removal placed on the notice.

**Recommended Description:**

The Description was changed to be consistent with the previous recommendations.

**We request that you pass the bill with the attached 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](mailto:Steveghi@Gmail.com). Thank you for the opportunity to present this testimony.

Sincerely,

*Steve Glanstein*

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

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# A BILL FOR AN ACT

RELATING TO PLANNED COMMUNITY ASSOCIATIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 414D-114, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§414D-114 Cumulative voting for directors.** (a) If the  
4 articles or bylaws provide for cumulative voting by members,  
5 members may so vote, by multiplying the number of votes the  
6 members are entitled to cast by the number of directors for whom  
7 they are entitled to vote, and cast the product for a single  
8 candidate or distribute the product among two or more  
9 candidates.

10           (b) Unless otherwise provided in the articles or bylaws,  
11 cumulative voting shall not be permitted. If authorized in the  
12 articles or bylaws, cumulative voting may be permitted; provided  
13 that:

14           (1) The meeting notice or statement accompanying the  
15 notice states that cumulative voting shall take place;

1           (2) A member gives notice of the member's intent to  
2           cumulatively vote not less than forty-eight hours  
3           before the meeting or such longer period as may be  
4           required by the articles or bylaws; and

5           (3) If one member gives notice of intent to cumulatively  
6           vote, all other members participating in the election  
7           may cumulate their votes without giving further  
8           notice.

9           (c) A director elected by cumulative voting may be removed  
10          by the members without cause if the requirements of section  
11          414D-138 are met unless the votes cast against removal or not  
12          consenting in writing to the removal would be sufficient to  
13          elect the director if voted cumulatively at an election at which  
14          the same total number of votes were cast and the entire number  
15          of directors authorized at the time of the director's most  
16          recent election were then being elected; provided that if the  
17          action is taken by ballot, all members entitled to vote had  
18          voted.

19          (d) Members may not cumulatively vote if the directors and  
20          members are identical.

21          (e) This section shall not apply to any planned community  
22          association governed by chapter 421J."

23          SECTION 2. Section 414D-138, Hawaii Revised Statutes, is  
24          amended to read as follows:

1 " [f] §414D-138 [f] **Removal of directors elected by members**

2 **or directors.** (a) The members may remove one or more directors  
3 elected by them without cause unless otherwise provided in the  
4 articles or bylaws.

5 (b) If a director is elected by a class, chapter, or other  
6 organizational unit, or by region or other geographic grouping,  
7 the director may be removed only by the members of that class,  
8 chapter, unit, or grouping.

9 (c) Except as provided in subsection (i), a director may  
10 be removed under subsection (a) or (b) only if the number of  
11 votes cast to remove the director would be sufficient to elect  
12 the director at a meeting to elect directors.

13 (d) If cumulative voting is authorized, a director may not  
14 be removed if the number of votes, or if the director was  
15 elected by a class, chapter, unit, or grouping of members, the  
16 number of votes of that class, chapter, unit, or grouping,  
17 sufficient to elect the director under cumulative voting is  
18 voted against the director's removal.

19 (e) A director elected by members may be removed by the  
20 members only at a meeting called for the purpose of removing the  
21 director and the meeting notice must state that the purpose, or  
22 one of the purposes, of the meeting is removal of the director.

23 (f) In computing whether a director is protected from  
24 removal under subsections (b) to (d), it should be assumed that

1 the votes against removal are cast in an election for the number  
2 of directors of the class to which the director to be removed  
3 belonged on the date of that director's election.

4 (g) An entire board of directors may be removed under  
5 subsections (a) to (e).

6 (h) A director elected by the board may be removed without  
7 cause by the vote of two-thirds of the directors then in office  
8 or such greater number as is set forth in the articles or  
9 bylaws; provided that a director elected by the board to fill  
10 the vacancy of a director elected by the members may be removed  
11 without cause by the members, but not the board.

12 (i) If, at the beginning of a director's term on the  
13 board, the articles or bylaws provide that the director may be  
14 removed for missing a specified number of board meetings, the  
15 board may remove the director for failing to attend the  
16 specified number of meetings. The director may be removed only  
17 if a majority of the directors then in office vote for the  
18 removal.

19 (j) This section shall not apply to any planned community  
20 association governed by chapter 421J."

21

22 SECTION 3. Section 421J-\_\_\_, Hawaii Revised Statutes, is  
23 amended by adding two new sections to be appropriately  
24 designated and to read as follows:



1 §421J- Cumulative voting for directors. (a) If the  
2 articles of incorporation, declaration, or bylaws provide for  
3 cumulative voting by members, members may so vote, by  
4 multiplying the number of votes the members are entitled to cast  
5 by the number of positions for whom they are entitled to vote,  
6 and cast the product for a single candidate or distribute the  
7 product among two or more candidates. The candidates receiving  
8 the highest number of votes under this section, up to the total  
9 number of positions to be filled, shall be deemed elected, and  
10 shall be given the longest term.

11 (b) Unless otherwise provided in the articles of  
12 incorporation, declaration, or bylaws, cumulative voting shall  
13 not be permitted.

14 (c) A director elected by cumulative voting may be removed  
15 by the members with or without cause if the requirements of  
16 section 421J- are met.

17  
18 §421J- Removal of directors elected by members or  
19 directors. (a) The members may remove one or more directors  
20 elected by them with or without cause unless otherwise provided  
21 in the articles of incorporation, declaration, or bylaws. If the  
22 removal is successful, the replacement director or directors  
23 shall be elected for the remainder of the removed director's or  
24 directors' term(s) in accordance with all applicable

1 requirements and procedures in the articles of incorporation,  
2 declaration, or bylaws, and this chapter. If the replacement  
3 director or directors are not elected at the meeting in which  
4 the removal occurred, notwithstanding anything to the contrary  
5 in the articles of incorporation, declaration, or bylaws, the  
6 board may fill vacancies to serve until the next annual or duly  
7 noticed special association meeting.

8 (b) If a director is elected by a class, chapter, or other  
9 organizational unit, or by region or other geographic grouping,  
10 the director may be removed only by the members of that class,  
11 chapter, unit, or grouping.

12 (c) Except as provided in subsection (j), a director may  
13 be removed under subsection (a) or (b) only if the number of  
14 votes cast to remove the director would be sufficient to elect  
15 the director at a meeting to elect directors.

16 (d) If cumulative voting is authorized at the meeting, the  
17 director may not be removed if the number of votes, or if the  
18 director was elected by a class, chapter, unit, or grouping of  
19 members, the number of votes of that class, chapter, unit, or  
20 grouping, sufficient to elect the director under cumulative  
21 voting is voted against the director's removal.

22 (e) A director elected by members may be removed by the  
23 members at any regular or special meeting provided that:

1           (i) the member delivers to the secretary of the  
2           association or managing agent a petition for  
3           removal of one or more directors, signed by  
4           members representing at least one-hundred units  
5           or members who own at least twenty-five percent  
6           of the total number of units in the planned  
7           community, whichever is less, and containing the  
8           printed name, identification of the unit, and  
9           address of the signing members and dates of their  
10           signatures; and

11           (ii) the petition is so delivered within seven days  
12           after the posting of a notice of intent to  
13           distribute proxies that include the election of  
14           directors in accordance with HRS 421J-4(e) or  
15           within seven days after the posting of a notice  
16           of the meeting under HRS 421J-3.5(e).

17           (f) If a timely petition is delivered to the secretary of  
18           the association or managing agent, the secretary or managing  
19           agent shall include the proposed removal in the notice of the  
20           meeting.

21           (g) In computing whether a director is protected from  
22           removal under subsections (b) to (d), it should be assumed that  
23           the votes against removal are cast in an election for the number

1 of directors of the class to which the director to be removed  
2 belonged at the meeting at which the removal is proposed.

3 (h) An entire board of directors may be removed under  
4 subsections (a) to (c).

5 (i) If, at the beginning of a director's term on the board,  
6 the articles of incorporation, declaration or bylaws provide  
7 that the director may be removed for missing a specified number  
8 of board meetings, the board may remove the director for failing  
9 to attend the specified number of meetings. The director may be  
10 removed only if a majority of the directors then in office vote  
11 for the removal.

12

13 SECTION 4. Section 421J-3.5, Hawaii Revised Statutes, is  
14 amended as follows:

15 **§ 421J-3.5 Notice required; regular annual and special**  
16 **meetings.**

17 (a) Not less than fourteen days in advance of any regular  
18 annual meeting or special meeting of an association, the secretary  
19 or other officer specified in the bylaws shall give written notice  
20 of the meeting to each member of the association as provided in  
21 the bylaws of the association or by two or more of the following  
22 means:

23 (1) Hand delivery;

1           (2) United States mail sent to the mailing address of  
2 each unit or to another mailing address designated in writing by  
3 the association member;

4           (3) Electronic mail to the electronic mailing address  
5 designated in writing by the association member; or

6           (4) Posting of the meeting notice in its entirety on a  
7 portion of the association's website that is accessible to all  
8 members.

9           (b) Notice pursuant to this section shall state:

10           (1) The date, time, and place of the meeting; and

11           (2) The items on the agenda, including the general  
12 nature of and rationale for any proposed amendment to the  
13 declaration or bylaws; any proposal for a special assessment,  
14 unless the authority for a special assessment is otherwise  
15 provided for in the association's governing documents; and any  
16 proposal to remove a member of the board.

17           (c) The requirements of this section shall not be interpreted  
18 to preclude any association member from proposing an amendment to  
19 the declaration or bylaws ~~or proposing to remove a member of the~~  
20 ~~board at an association meeting.~~

21           (d) The requirements of this section shall not be interpreted  
22 to apply to any board meetings or committee meetings of a planned  
23 community association.

1       (e) If the board of directors does not intend to use  
2 association funds to distribute proxies that include the  
3 election of directors and therefore does not post notice  
4 pursuant to section 421J-4(e), the board shall post notice in  
5 prominent locations within the project of its intent to  
6 distribute written notice of an association meeting at least  
7 twenty-one days in advance of distributing written notice under  
8 section 421J-3.5(a).

9       SECTION ~~3~~5. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11       SECTION ~~4~~6. This Act shall take effect on July 1, 2050.

**Report Title:**

Planned Community Associations; Nonprofit Corporations;  
Directors

**Description:**

Exempts planned community associations from certain requirements regarding cumulative voting for and the removal of directors under the Hawaii Nonprofit Corporations Act. Requires any proposal to remove a board member of a planned community association be noticed and the proposal to remove included on the meeting notice, upon request by an association member delivered at the earlier of seven days after the posting of a notice of intent to distribute proxies that include the election of directors in accordance with HRS 421J-4(e) or seven days after the posting of a notice of intent to distribute written notice of a meeting under HRS 421J-3.5(e). Requires posting of a notice of intent to distribute written notice of a meeting if the board of directors does not post notice of its intent to distribute proxies that include the election of directors under section 421J-4(e). Takes effect on 7/1/2050. (HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

**LATE**

**HB-2563-HD-1**

Submitted on: 2/24/2020 2:44:18 PM

Testimony for JUD on 2/25/2020 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jane Sugimura	Hawaii Council for Assoc. of Apt. Owners	Support	No

Comments:

Hawaii Council of Community Associations supports the intent and purpose of this bill and incorporates by reference the testimony of Steven Glanstein in support of this bill.



**HB-2563-HD-1**

Submitted on: 2/22/2020 10:28:48 AM

Testimony for JUD on 2/25/2020 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Associa	Support	No

Comments:

The Bill clarifies important issues related to voting.

**HB-2563-HD-1**

Submitted on: 2/24/2020 10:26:43 AM

Testimony for JUD on 2/25/2020 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anne Anderson	Individual	Support	No

Comments:

Dear Rep. Lee, Chair, Rep. San Buenaventura, Vice Chair, and Members of the Committee:

I support the intent of H.B. 2563, H.D.1, but believe that it needs to be amended. I support the changes proposed by the Hawai'i State Association of Parliamentarians Legislative Committee and ask the committee to approve the bill with those changes.

Respectfully submitted,

Anne Anderson

**HB-2563-HD-1**

Submitted on: 2/24/2020 10:45:04 AM

Testimony for JUD on 2/25/2020 2:00:00 PM

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

Comments:

Dear Rep. Lee, Chair, Rep. San Buenaventura, Vice Chair, and Members of the Committee:

I support the intent of H.B. 2563, H.D.1, but believe that it needs to be amended. I support the changes proposed by the Hawai'i State Association of Parliamentarians Legislative Committee and ask the committee to approve the bill with those changes.

Respectfully submitted,

Mark McKellar

**HB-2563-HD-1**

Submitted on: 2/24/2020 11:12:14 AM

Testimony for JUD on 2/25/2020 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bradford Lee Hair	Individual	Support	No

Comments:

Dear Rep. Lee, Chair, Rep. San Buenaventura, Vice Chair, and Members of the Committee:

I support the intent of H.B. 2563, H.D.1, but believe that it needs to be amended. I support the changes proposed by the Hawai'i State Association of Parliamentarians Legislative Committee and ask the committee to approve the bill with those changes.

Respectfully submitted,

Bradford Lee Hair

**HB-2563-HD-1**

Submitted on: 2/24/2020 1:35:19 PM

Testimony for JUD on 2/25/2020 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lance S. Fujisaki	Individual	Support	No

Comments:

Dear Rep. Lee, Chair, Rep. San Buenaventura, Vice Chair, and Members of the Committee:

I support the intent of H.B. 2563, H.D.1, but believe that it needs to be amended. We support the changes proposed by the Hawai'i State Association of Parliamentarians Legislative Committee and ask the committee to approve the bill with those changes.

Respectfully submitted,

Lance Fujisaki

**LATE**

**HB-2563-HD-1**

Submitted on: 2/24/2020 2:22:14 PM

Testimony for JUD on 2/25/2020 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel Glanstein	Individual	Support	No

Comments:

I'm a practicing parliamentarian. The issues of:

1. resignation in both condominium and planned community associations;
2. filling of vacancies in planned community associations;
3. cumulative voting in planned community associations; and
4. resignations in both types of organizations

have been interpreted differently by different attorneys. It can turn effective annual meetings into a forum search by the board of directors. I support the proposed changes by the Hawaii State Association of Parliamentarians to address these issues.

**LATE**

Dear Rep. Lee, Chair, Rep. San Buenaventura, Vice Chair, and Members of the Committee:

I support the intent of H.B. 2563, H.D.1, but believe that it needs to be amended. I support the changes proposed by the Hawai'i State Association of Parliamentarians Legislative Committee and ask the committee to approve the bill with those changes.

Respectfully submitted,

Chandra R.N. Kanemaru  
Country Club Village, Phase 2