

**HB-2563**

Submitted on: 2/11/2020 9:01:18 AM

Testimony for CPC on 2/12/2020 2:05:00 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	Oppose	No

Comments:

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

I oppose H.B. 2563 for the following reasons:

The purpose of this bill is to exempt planned community associations governed by Chapter 421J from the cumulative voting procedures in Sections 414D-114 and 414D-138 of the Hawai'i Nonprofit Corporations Act. I believe the procedures in these two sections are beneficial provisions for all nonprofit corporations and there is no good reason to exempt planned community associations from these procedures.

It should be noted that cumulative voting is not permitted unless provided in the articles or bylaws of a nonprofit corporation. Sections 414D-114 and 414D-138 do not change the law in this regard, although Section 414D-114(b) confirms and restates the requirement that cumulative voting must be provided in the articles or bylaws.

Section 414D-114(a) clarifies the cumulative voting procedure by providing the mathematical formula for calculating votes and the number of votes each member receives. This is helpful because articles or bylaws that provide for cumulative voting usually do not provide such detailed information on cumulative voting.

Section 414D-114(b) includes helpful information as it provides the specific mechanism for opting for cumulative voting. This section provides specific deadlines to opt for cumulative voting so that the organization can adequately prepare for the election ahead of time.

Section 414D-114(c) addresses the requirements for removing a director elected by cumulative voting by requiring that the removal vote also be calculated based upon cumulative voting. This is an important requirement because the purpose of cumulative voting is to enable a minority of members to use their collective voting power to elect at least one board member to represent their interests on the board, even if they are outnumbered by a majority faction. Without adequate removal procedures that take into account cumulative voting, the majority will be able to use its voting power to remove the director elected by the minority of directors and undo the benefits of cumulative voting. Section 414D-114(b) is needed because many planned community association articles or bylaws do not contain adequate removal provisions, and for those associations, cumulative voting will be rendered useless.

Section 414D-138 addresses removal of directors elected by members or directors. By exempting planned community associations from Section 414D-138, members may have no right to remove directors without cause. See Robert's Rules of Order, Newly Revised, Section 62 regarding the removal of elected officers. Accordingly, if this amendment is adopted, a number of associations, who currently rely on Section 414D-138 as the authority for the removal of directors, may be left without recourse to remove directors they no longer wish to serve on their boards, unless there is a basis to remove those directors for cause.

These provisions generally protect the voting rights of members who elect directors. For example, if a group of members elect a director, that director should be protected from removal by members who had no right to vote in the election of that director. This applies, for example, where planned community associations have "voting members" who cast votes in elections on behalf of individual members. Several large planned community associations in Hawai'i elect directors using this system.

In summary, there are no good reasons to exempt planned community associations from Sections 414D-114 and 414D-138. Many planned community associations were created under, and in reliance upon, the provisions of Chapter 414D. Sections 414D-114 and 414D-138 contain helpful provisions to protect cumulative voting if cumulative voting is already provided for in the articles or bylaws of nonprofit corporations. The provisions are neither burdensome nor unfair. For the reasons stated herein, I oppose H.B. 2563.

Respectfully submitted,

Mark McKellar



**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 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 HB2563; 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 HB2563.

**Summary of Bill:**

This Bill proposes to remove the applicability of the cumulative voting restrictions and the director removal provisions from the Non-profit corporation Act as they apply to Planned Community Associations (PCAs).

**Section 1:**

HRS §414D-114 provides that cumulative voting is permitted if:

- (a) provided in the articles or bylaws;
- (b) the meeting notice or statement accompanying the notice must state that cumulative voting shall take place, **and**

(c) a member gives notice of intent to cumulatively vote.

At least one PCA board (and previously an incorporated condominium board), by simply omitting the reference to “cumulative voting” from the notice argued that there is no cumulative voting, thus denying a minority an opportunity to obtain representation on the board.<sup>1</sup>

Associations have received separate legal opinions whether the notice must include the cumulative voting statement in order for the association to use cumulative voting.

An association's governing documents are available to all owners. Therefore, from a governance position, it shouldn't be up to the board of directors or property management to place cumulative voting in the meeting notice.

Robert's Rules of Order Newly Revised (11<sup>th</sup> ed.) is required by statute for PCAs (HRS 421J-6). Robert's Rules also prohibits cumulative voting **unless required** in the law or governing documents.

Finally, there is a convoluted removal process in §414D-114(c) for a director elected by cumulative voting that requires voting reference to a meeting at “the time of the director's most recent election”. **The previous election reference fails to consider substantial ownership changes between annual meetings, elections by acclamation, or even a prior election without cumulative voting.**

We therefore recommend that PCAs not be handicapped by a statute that can be either manipulated to deny cumulative voting when required or prevent owners from removing a director without a complex multi-meeting analysis.

## **Section 2:**

HRS §414D-138 contains a convoluted removal process that ignores the reality of PCA operations.

HRS §414D-138 subsections (b) through (f) state,

- (b) If a director is elected by a class, chapter, or other organizational unit, or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.
- (c) Except as provided in subsection (l), a director may be removed under subsection (a) or (b) only if the **number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.**
- (d) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping, **sufficient**

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<sup>1</sup>This was fixed for condominium boards by referencing cumulative voting in Chapter 514B.

**to elect the director under cumulative voting is voted against the director's removal.**

- (e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.<sup>2</sup>
- (f) In computing whether a director is protected from removal under subsections (b) to (d), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the **date of that director's election.**

*[Emphasis added.]*

It makes any removal of an individual director subject to a test that a director shall not be removed if the **votes against removal** are cast in an election for, “the number of directors of the class to which the director to be removed belonged **on the date of that director's election.**” *[Emphasis added.]*

The director may have been elected by acclamation so the number of votes are not available. In other cases, there is no record of the count and it is impossible to follow the law.

The situation is further aggravated if the director was elected by cumulative voting and there is no cumulative voting at a subsequent meeting. The additional cumulative voting reference in HRS §414D-114 further complicates the removal process.

Finally, ownership is constantly changing in community associations so it is unfair to deny the ownership a clear and unambiguous method for removing directors. We believe that the requirement for previous notice in HB2562 would place directors on notice of a prospective removal and the votes required should be defined in the PCAs bylaws.

**We ask that you pass the bill.**

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, Professional Registered Parliamentarian  
Chair, HSAP Legislative Committee

SG:tbs

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<sup>2</sup> Several attorneys have opined that this subsection (3) is overridden by HRS §421J-3.5 for Planned Community Associations.

**HB-2563**

Submitted on: 2/10/2020 1:48:13 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

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

Comments:

We support this Bill.



February 11, 2020

VIA WEB TRANSMITTAL

Hearing Date: Wednesday, February 12, 2020

Time: 2:05 p.m.

Place: Conference Room 329

Committee on Consumer Protection & Commerce  
House of Representatives, the 30th Legislature  
Regular Session of 2020

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

Dear Chair Takumi, Vice Chair Ichiyama 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 to HB 2563 because the Bill proposes to remove the applicability of the cumulative voting restrictions and the director removal provisions from the non-profit corporation Act as they apply to Planned Community Associations.

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

Sincerely yours,

/s/ R. Laree McGuire  
R Laree McGuire  
CAI LAC Hawaii



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

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

I oppose H.B. 2563 for the following reasons:

The purpose of this bill is to exempt planned community associations governed by Chapter 421J from the cumulative voting procedures in Sections 414D-114 and 414D-138 of the Hawai'i Nonprofit Corporations Act. I believe the procedures in these two sections are beneficial provisions for all nonprofit corporations and there is no good reason to exempt planned community associations from these procedures.

It should be noted that cumulative voting is not permitted unless provided in the articles or bylaws of a nonprofit corporation. Sections 414D-114 and 414D-138 do not change the law in this regard, although Section 414D-114(b) confirms and restates the requirement that cumulative voting must be provided in the articles or bylaws.

Section 414D-114(a) clarifies the cumulative voting procedure by providing the mathematical formula for calculating votes and the number of votes each member receives. This is helpful because articles or bylaws that provide for cumulative voting usually do not provide such detailed information on cumulative voting.

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directors they no longer wish to serve on their boards, unless there is a basis to remove those directors for cause.

These provisions generally protect the voting rights of members who elect directors. For example, if a group of members elect a director, that director should be protected from removal by members who had no right to vote in the election of that director. This applies, for example, where planned community associations have “voting members” who cast votes in elections on behalf of individual members. Several large planned community associations in Hawai`i elect directors using this system.

In summary, there are no good reasons to exempt planned community associations from Sections 414D-114 and 414D-138. Many planned community associations were created under, and in reliance upon, the provisions of Chapter 414D. Sections 414D-114 and 414D-138 contain helpful provisions to protect cumulative voting if cumulative voting is already provided for in the articles or bylaws of nonprofit corporations. The provisions are neither burdensome nor unfair. For the reasons stated herein, I oppose H.B. 2563.

Respectfully submitted,

*Chandra R.N. Kanemaru*

AOAO Board Secretary/Director of Country Club village, Phase 2

**HB-2563**

Submitted on: 2/11/2020 8:50:25 AM

Testimony for CPC on 2/12/2020 2:05:00 PM

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

Comments:

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

I oppose H.B. 2563 for the following reasons:

The purpose of this bill is to exempt planned community associations governed by Chapter 421J from the cumulative voting procedures in Sections 414D-114 and 414D-138 of the Hawai'i Nonprofit Corporations Act. I believe the procedures in these two sections are beneficial provisions for all nonprofit corporations and there is no good reason to exempt planned community associations from these procedures.

It should be noted that cumulative voting is not permitted unless provided in the articles or bylaws of a nonprofit corporation. Sections 414D-114 and 414D-138 do not change the law in this regard, although Section 414D-114(b) confirms and restates the requirement that cumulative voting must be provided in the articles or bylaws.

Section 414D-114(a) clarifies the cumulative voting procedure by providing the mathematical formula for calculating votes and the number of votes each member receives. This is helpful because articles or bylaws that provide for cumulative voting usually do not provide such detailed information on cumulative voting.

Section 414D-114(b) includes helpful information as it provides the specific mechanism for opting for cumulative voting. This section provides specific deadlines to opt for cumulative voting so that the organization can adequately prepare for the election ahead of time.

Section 414D-114(c) addresses the requirements for removing a director elected by cumulative voting by requiring that the removal vote also be calculated based upon cumulative voting. This is an important requirement because the purpose of cumulative voting is to enable a minority of members to use their collective voting power to elect at least one board member to represent their interests on the board, even if they are outnumbered by a majority faction. Without adequate removal procedures that take into account cumulative voting, the majority will be able to use its voting power to remove the director elected by the minority of directors and undo the benefits of cumulative voting. Section 414D-114(b) is needed because many planned community association

articles or bylaws do not contain adequate removal provisions, and for those associations, cumulative voting will be rendered useless.

Section 414D-138 addresses removal of directors elected by members or directors. By exempting planned community associations from Section 414D-138, members may have no right to remove directors without cause. See Robert's Rules of Order, Newly Revised, Section 62 regarding the removal of elected officers. Accordingly, if this amendment is adopted, a number of associations, who currently rely on Section 414D-138 as the authority for the removal of directors may be left without recourse to remove directors they no longer wish to serve on their boards, unless there is a basis to remove those directors for cause.

These provisions generally protect the voting rights of members who elect directors. For example, if a group of members elect a director, that director should be protected from removal by members who had no right to vote in the election of that director. This applies, for example, where planned community associations have "voting members" who cast votes in elections on behalf of individual members. Several large planned community associations in Hawai'i elect directors using this system.

In summary, there are no good reasons to exempt planned community associations from Sections 414D-114 and 414D-138. Many planned community associations were created under, and in reliance upon, the provisions of Chapter 414D. Sections 414D-114 and 414D-138 contain helpful provisions to protect cumulative voting if cumulative voting is already provided for in the articles or bylaws of nonprofit corporations. The provisions are neither burdensome nor unfair. For the reasons stated herein, I oppose H.B. 2563.

Respectfully submitted,

M. Anne Anderson

**HB-2563**

Submitted on: 2/11/2020 9:14:12 AM

Testimony for CPC on 2/12/2020 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Beverly FeBenito	Individual	Oppose	No

Comments:

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

I oppose H.B. 2563 for the following reasons:

The purpose of this bill is to exempt planned community associations governed by Chapter 421J from the cumulative voting procedures in Sections 414D-114 and 414D-138 of the Hawai'i Nonprofit Corporations Act. I believe the procedures in these two sections are beneficial provisions for all nonprofit corporations and there is no good reason to exempt planned community associations from these procedures.

It should be noted that cumulative voting is not permitted unless provided in the articles or bylaws of a nonprofit corporation. Sections 414D-114 and 414D-138 do not change the law in this regard, although Section 414D-114(b) confirms and restates the requirement that cumulative voting must be provided in the articles or bylaws.

Section 414D-114(a) clarifies the cumulative voting procedure by providing the mathematical formula for calculating votes and the number of votes each member receives. This is helpful because articles or bylaws that provide for cumulative voting usually do not provide such detailed information on cumulative voting.

Section 414D-114(b) includes helpful information as it provides the specific mechanism for opting for cumulative voting. This section provides specific deadlines to opt for cumulative voting so that the organization can adequately prepare for the election ahead of time.

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These provisions generally protect the voting rights of members who elect directors. For example, if a group of members elect a director, that director should be protected from removal by members who had no right to vote in the election of that director. This applies, for example, where planned community associations have "voting members" who cast votes in elections on behalf of individual members. Several large planned community associations in Hawai'i elect directors using this system.

In summary, there are no good reasons to exempt planned community associations from Sections 414D-114 and 414D-138. Many planned community associations were created under, and in reliance upon, the provisions of Chapter 414D. Sections 414D-114 and 414D-138 contain helpful provisions to protect cumulative voting if cumulative voting is already provided for in the articles or bylaws of nonprofit corporations. The provisions are neither burdensome nor unfair. For the reasons stated herein, I oppose H.B. 2563.

Respectfully submitted,

Beverly FeBenito

**HB-2563**

Submitted on: 2/11/2020 10:16:05 AM

Testimony for CPC on 2/12/2020 2:05:00 PM

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

Comments:

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

I oppose H.B. 2563 for the following reasons:

The purpose of this bill is to exempt planned community associations governed by Chapter 421J from the cumulative voting procedures in Sections 414D-114 and 414D-138 of the Hawai'i Nonprofit Corporations Act. I believe the procedures in these two sections are beneficial provisions for all nonprofit corporations and there is no good reason to exempt planned community associations from these procedures.

It should be noted that cumulative voting is not permitted unless provided in the articles or bylaws of a nonprofit corporation. Sections 414D-114 and 414D-138 do not change the law in this regard, although Section 414D-114(b) confirms and restates the requirement that cumulative voting must be provided in the articles or bylaws.

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Respectfully submitted,

Bradford Lee Hair

**HB-2563**

Submitted on: 2/11/2020 10:24:23 AM

Testimony for CPC on 2/12/2020 2:05:00 PM

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

Comments:

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

I oppose H.B. 2563 for the following reasons:

The purpose of this bill is to exempt planned community associations governed by Chapter 421J from the cumulative voting procedures in Sections 414D-114 and 414D-138 of the Hawai'i Nonprofit Corporations Act. I believe the procedures in these two sections are beneficial provisions for all nonprofit corporations and there is no good reason to exempt planned community associations from these procedures.

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Respectfully submitted,

Lance Fujisaki

**HB-2563**

Submitted on: 2/11/2020 10:29:33 AM

Testimony for CPC on 2/12/2020 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
mary freeman	Individual	Oppose	No

Comments:

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

I am opposed to H.B. 2563 for the following reasons:

The purpose of this bill is to exempt planned community associations governed by Chapter 421J from the cumulative voting procedures in Sections 414D-114 and 414D-138 of the Hawai'i Nonprofit Corporations Act. I believe the procedures in these two sections are beneficial provisions for all nonprofit corporations and there is no good reason to exempt planned community associations from these procedures.

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Respectfully submitted,

Mary S. Freeman

**HB-2563**

Submitted on: 2/11/2020 12:38:38 PM

Testimony for CPC on 2/12/2020 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul A. Ireland Koftinow	Individual	Oppose	No

Comments:

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

I oppose H.B. 2563 for the following reasons:

The purpose of this bill is to exempt planned community associations governed by Chapter 421J from the cumulative voting procedures in Sections 414D-114 and 414D-138 of the Hawai'i Nonprofit Corporations Act. I believe the procedures in these two sections are beneficial provisions for all nonprofit corporations and there is no good reason to exempt planned community associations from these procedures.

It should be noted that cumulative voting is not permitted unless provided in the articles or bylaws of a nonprofit corporation. Sections 414D-114 and 414D-138 do not change the law in this regard, although Section 414D-114(b) confirms and restates the requirement that cumulative voting must be provided in the articles or bylaws.

Section 414D-114(a) clarifies the cumulative voting procedure by providing the mathematical formula for calculating votes and the number of votes each member receives. This is helpful because articles or bylaws that provide for cumulative voting usually do not provide such detailed information on cumulative voting.

Section 414D-114(b) includes helpful information as it provides the specific mechanism for opting for cumulative voting. This section provides specific deadlines to opt for cumulative voting so that the organization can adequately prepare for the election ahead of time.

Section 414D-114(c) addresses the requirements for removing a director elected by cumulative voting by requiring that the removal vote also be calculated based upon cumulative voting. This is an important requirement because the purpose of cumulative voting is to enable a minority of members to use their collective voting power to elect at least one board member to represent their interests on the board, even if they are outnumbered by a majority faction. Without adequate removal procedures that take into account cumulative voting, the majority will be able to use its voting power to remove the director elected by the minority of directors and undo the benefits of cumulative voting. Section 414D-114(b) is needed because many planned community association



articles or bylaws do not contain adequate removal provisions, and for those associations, cumulative voting will be rendered useless.

Section 414D-138 addresses removal of directors elected by members or directors. By exempting planned community associations from Section 414D-138, members may have no right to remove directors without cause. See Robert's Rules of Order, Newly Revised, Section 62 regarding the removal of elected officers. Accordingly, if this amendment is adopted, a number of associations, who currently rely on Section 414D-138 as the authority for the removal of directors, may be left without recourse to remove directors they no longer wish to serve on their boards, unless there is a basis to remove those directors for cause.

These provisions generally protect the voting rights of members who elect directors. For example, if a group of members elect a director, that director should be protected from removal by members who had no right to vote in the election of that director. This applies, for example, where planned community associations have "voting members" who cast votes in elections on behalf of individual members. Several large planned community associations in Hawai'i elect directors using this system.

In summary, there are no good reasons to exempt planned community associations from Sections 414D-114 and 414D-138. Many planned community associations were created under, and in reliance upon, the provisions of Chapter 414D. Sections 414D-114 and 414D-138 contain helpful provisions to protect cumulative voting if cumulative voting is already provided for in the articles or bylaws of nonprofit corporations. The provisions are neither burdensome nor unfair. For the reasons stated herein, I oppose H.B. 2563.

Respectfully submitted,

Paul A. Ireland Koftinow

**HB-2563**

Submitted on: 2/11/2020 11:06:05 PM

Testimony for CPC on 2/12/2020 2:05:00 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:

HCCA supports the form and content of this bill and incorporates by reference the testimony in support of this bill by Steve Glanstein