

**HB-1651**

Submitted on: 2/1/2022 3:41:56 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Resident Manager	Honolulu Tower AOAO	Oppose	No

Comments:

Honolulu Tower is a 396 unit condominium, built in 1982, located at Beretania and Maunakea Streets. The Board of Directors of the Honolulu Tower Association of Apartment Owners opposes this bill. We send in testimony to that effect every year this bill is introduced. Please accept this as testimony in strong opposition to this bill. Almost every year we submit testimony in opposition to this issue.

On Thursday, March 10, 2022, we are conducting the Association's annual meeting. We again expect that most proxies will be given to the board as a whole. When individual unit owners do not solicit proxies because they may be candidates for the board, this is the case. This option has existed for years. It works. There is also the chance that owners will not return their proxies if this option is removed. Should that happen, there could very well be a lack of quorum.

# HCCA

Hawaii Council of Community  
Associations  
[www.hawaiicouncil.com](http://www.hawaiicouncil.com)

February 1, 2022

Representative Aaron Johanson, Chair  
Representative Lisa Kitagawa, Vice-Chair  
House Committee on Consumer Protection and Commerce

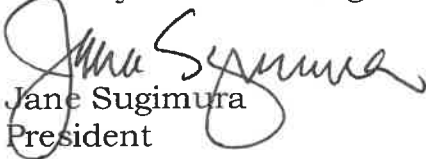
Re: HB1651 Relating to Condominiums. Testimony in opposition.  
Thursday, February 3, 2022 at 2 p.m.

Chair Johanson, Vice-Chair Kitagawa and Members of the Committee:

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

HCCA opposes this bill because an owner should have the right to assign his or her proxy to the Board as a whole if the owner believes that the Board is doing a satisfactory job of administering the project. The advocates for this bill can accomplish their objective by educating owners not to mark that box; however, removal of that box just minimizes an owner's right to choose.

Thank you for allowing me to testify on this bill.

  
Jane Sugimura  
President

**HB-1651**

Submitted on: 2/1/2022 5:41:11 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Primrose Nakamoto	Lualualei I	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Primrose Leong-Nakamoto

**HB-1651**

Submitted on: 2/1/2022 5:50:11 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Dante Carpenter	Country Club Village, Phase 2, AOA	Oppose	No

Comments:

Rep. Johansen, Chair; Rep. Kitagawa, Vice-Chair; and Members of the Committee:

I have been a Homeowner and Director since 1996. I oppose HB 1651 for the reasons noted. Condominium Associations are legal entities that act by and through their Boards of Directors. Condo Boards are comprised of individual directors who are members of their associations and elected by their fellow owners. These individual directors act collectively as a body (i.e., the Board) to oversee the administration and operation of the condominium project. It is the Board, as a whole, that owners rely upon and trust to manage the affairs of their associations. Thus, it follows that many owners give their proxies to the "Board as a whole," because that is the entity in which they have faith and confidence.

For those owners who do not have confidence in their association's board of directors or prefer to give their proxies to an individual, they are free to check one of the other boxes on the Standard Proxy Form and give their proxies to another individual owner of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the Board as an entity since 1984.

Without stating any explanation, HB 1651 would eliminate the box on Standard Proxy Forms which would allow owners to give their proxies to the Board as a whole!?! Frankly, there is no good reason for this change! Owners ought to be able to give their proxies to the Board as a whole if they wish to do so. The Legislature should not interfere with this process! For the reasons stated above, I Oppose HB 1651 and request this Bill be Filed!

Respectfully submitted,

***Dante Carpenter***, Vice-Pres, CCV, Phase 2 (469 Units)

P. S. I have been a Homeowner and Director in CCV2 since 1996

**HB-1651**

Submitted on: 2/1/2022 6:11:56 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Mark McKellar	Law Offices of Mark K. McKellar, LLC	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

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 1, 2022

Honorable Rep. Aaron Ling Johanson, Chair  
Honorable Rep. Lisa Kitagawa, 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 OPPOSITION to HB1651; Hearing Date: February 3, 2022 at 2:00 p.m. in House Conf. conference room 329/videoconference; sent via Internet**

Dear Rep. Johanson, Chairman; Rep. Kitagawa, Vice-Chair; Committee Members,

Thank you for the opportunity to provide testimony on this bill. Unfortunately, I have a prior annual meeting so may be late or unable to appear via videoconference.

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 2,000 meetings in 39 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 OPPOSITION to HB1651.

**Summary of Bill:**

The Bill proposes to remove the mandate that proxies contain an option for owners to direct the majority of directors present at a meeting to vote the owner's interest.

**Current Status:**

The existing statute, HRS §514B-123, provides a balanced method for condominium unit owners who wish to use association funds to:

1. solicit proxies for voting at association elections, or
2. solicit proxies for other purposes

at an annual or special meeting when association funds are used for proxy solicitations.

**If association funds are to be used, there is a mandatory posting on the property and equal opportunity for owner solicitation.** Owners have an opportunity to require that their names and statements of up to one page be submitted with the official meeting notice.

Owners receive a notice that contains names and statements of individuals requesting association funds. This gives them an opportunity to review the statements and decide whether to execute a proxy document for the specific meeting.

Owners have several options if they wish to execute a proxy document. The owner, by proxy can:

1. name the board of directors, as a whole, based upon the decision of a majority of the directors present at a meeting;
2. name the board of directors to be split evenly among the directors present at a meeting;
3. name an individual; or
4. be restricted to quorum only.

Additionally, the current statute provides that the Owner can limit the proxy holder as the Owner desires.

The Owner's proxy is limited to the specified meeting and its adjournments. Therefore, a “forever proxy” cannot be used. The Owner has the right to revoke a proxy or go to the meeting and vote in person.

**History:** This proposed change to the law has a long history of opposition and rejection.

### **2021 Rejection**

This bill contains wording that was included in HB221 presented in 2021. The wording received significant opposition by community leaders (HB221).

The House Consumer Protection & Commerce Committee (CPC) issued a report and removed the wording that matches the wording in the current bill.<sup>1</sup> The CPC Report stated in part:

“Your Committee finds that proxies are an important part of the governance of a condominium association, including ensuring quorum for purposes of annual meetings. Proxies allow unit owners to participate in association matters in the event they are unable

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<sup>1</sup> [https://www.capitol.hawaii.gov/session2021/CommReports/HB221\\_HD1\\_HSCR743\\_.pdf](https://www.capitol.hawaii.gov/session2021/CommReports/HB221_HD1_HSCR743_.pdf)

to be physically present at an association meeting.

Your Committee further finds, however, that some condominium owners have raised concerns that proxies may be used by board members in an unscrupulous manner. This measure is intended to help address these concerns.

Your Committee has amended this measure by:

- (1) Retaining statutory language that provides the option on a standard proxy form to submit a proxy to the condominium board as a whole;
- (2) Changing the effective date to January 1, 2050, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.”

*[Emphasis added.]*

The Committee once again chose NOT to amend the existing wording in the state law. The remaining part of the bill went to the Senate and it was deferred on March 18, 2021.<sup>2</sup>

On February 3, 2021, the Senate Committee on Commerce and Consumer Protection deferred a similar bill (SB688).

On February 10, 2021, the CPC deferred a bill with similar wording (HB495).

### **2019 Rejection**

This bill is similar to a House bill presented in 2019 which received significant opposition by community leaders (HB347). It passed the House and was not heard by the Senate Committee on Commerce and Consumer Protection.<sup>3</sup>

### **Genesis of “Board Majority”**

I was a condominium owner in 1979-1985. During this time, many proxies contained a place for appointing the president. **Prior to 1984, there was no board majority option. The result was that association presidents received most of the proxies and controlled the meeting.**

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<sup>2</sup> This section of the bill also similar to bills presented and never adopted in 2009 (HB2042 and SB499; HB2042 was not heard and SB499 was deferred February 24, 2009 by the Senate Committee on Commerce and Consumer Protection).

<sup>3</sup> This section of the bill also similar to bills presented and never adopted in 2009 (HB2042 and SB499; HB2042 was not heard and SB499 was deferred February 24, 2009 by the Senate Committee on Commerce and Consumer Protection).



**The right of Owners to appoint the board as an entity was originally added by Act 184 in 1984, about 37 years ago. It was extensively reviewed and included as part of the Recodification Report in 2003. This later became Chapter 514B.**

**The current system has worked well and has also been incorporated into Planned Community Associations.**

There is still no need to eliminate the board majority box on the proxy that was established many years ago.

The changes proposed in this bill are an unnecessary prohibition. We believe they are not in the best interest of condominium associations or their owners. There is no good or compelling reason to make these proposed changes.

**Our position:**

The use of proxies has proved to be an important part of the association quorum and meeting process. If an Owner is comfortable with their board, the Owner currently has the right to specify a majority of board members present (“board majority”) as recipients of a proxy.

There is no reason presented for eliminating the board majority requirement on standard association proxies.

**We ask that the Committee defer or hold this 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*

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

**HB-1651**

Submitted on: 2/2/2022 12:17:24 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lourdes Scheibert	Condo Owner	Support	Yes

Comments:

To: Chair Rep. Aaron Ling Johanson

Re: HB1651, Relating to Condominium Associations: Amends the requirements for a condominium association's standard proxy form by deleting the option for a condominium owner to give the proxy to the board as a whole.

Aloha Chair Johanson, Vice-Chair Kitagawa, and Members of the Committee,

I am Lourdes Scheibert, a director 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. I am also a participant of Hui ‘Oia’i’o. I support HB1651.

Legislative Session 1984 established ACT 184: Dinman and Yokoyama, attorneys at Law who spearheaded an ad hoc committee to review several condominium Senate bills, based on their findings it went on to establish 514A-83.2 Proxies, **(c) Proxies may be given to the board of directors as an entity**. It then evolved to 514B-123: Proxies (C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting;

Today, 38 years later, issues with proxy as a whole assigned to the majority of directors continues and has escalated disputes between owners, the board of directors, etc. Owners feel the board is given to broad powers thereby become abusive, unfair and have the opportunity to vote themselves in year after year.

After 38 years, the condominium community is left with buildings that are sorely in need of repair, maintenance and replacement of major equipment. One primary formation of the Board of Directors is to “maintain, preserve and protect” the building’s infrastructure. In many Associations after 38 years this did not happen. Instead maintenance fees were kept artificially low than passing the financial burden to the next generation. Today many buildings do not have enough cash reserves to meet the Life Safety Evaluation, mandate for fire sprinkler systems to repair their aging infrastructure.

HB1651, by deleting this proxy would return to the owners, their right as a whole community to self-govern themselves and self-enforcement. In a 1989 report, Condominium Governance -

An Examination of Some Issues by Charlotte A. Carter-Yamauchi. A quote from the very first of Hawaii's condominium specialist, John Morris, hired in 1988.

*A number of boards tend to treat inquiries and requests for information as if intended solely for the personal benefit of the requesting party and **not** in the general interest of all owners. They either are unaware or forget that chapter 514A is essentially self-enforcing, with the owners themselves having primary responsibility for ensuring their board complies with their governing documents and with state law.*

The issues John Morris identified in this 1989's report continues today and have escalated.

Thank-you

**HB-1651**

Submitted on: 2/2/2022 12:31:25 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Grant Oka	Kipuka at Hoakalei AOUO	Oppose	No

Comments:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Grant Oka

President, Kipuka at Hoakalei AOUO

**HB-1651**

Submitted on: 2/2/2022 1:27:59 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Marilyn Joyce Oka	Kekuilani Villas	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Marilyn Joyce Oka

**HB-1651**

Submitted on: 2/1/2022 2:54:36 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
lynne matusow	Individual	Oppose	No

Comments:

Please accept this as testimony in strong opposiiton to this bill. You are trying to fix a non-existent problem. As a condo owner, resident, and board member I can attest to the fact that many proxies are given to the board as a whole. Owners often do not know the individual names of the board members. But they trust the board as a whole to properly execute their proxies. This system has existed for years and works. Almost every year there is unsuccessful legislation to excise this well liked option. I had hoped this would not be introduced again.

Stupid me. There is also the chance that owners will not return their proxies if this option is removed, possibly resulting in lack of quorum.

This bill, if enacted, will greatly damage condo associations in the state.

**HB-1651**

Submitted on: 2/1/2022 3:30:44 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Laurence Sussman	Individual	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Laurence Sussman  
Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair,  
and Members of the Committee:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Laurence Sussman



**HB-1651**

Submitted on: 2/1/2022 3:50:04 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Anne Anderson	Individual	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Anne Anderson

**HB-1651**

Submitted on: 2/1/2022 4:38:54 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Carol Walker	Individual	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Carol Walker

**HB-1651**

Submitted on: 2/1/2022 5:45:37 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Laura Bearden	Individual	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Laura Bearden

**House of Representatives**  
**Committee on Consumer Protection and Commerce**  
**Thursday, February 3, 2022**  
**2:00 p.m.**

To: Chair Aaron Ling Johanson  
Re: HB1651, Relating to Condominiums

Aloha Chair Johanson, Vice-Chair Kitagawa, 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.

I am also the leader of Hui 'Oia'i'o, informally known as "COCO," a coalition of over three hundred property owners--mostly seniors--from over 150 common-interest associations in Hawaii. With colleagues, I have personally participated in over ten election records reviews and found that proxies are misunderstood, misused, sometimes voided when valid, and sometimes deemed valid when actually invalid. During one of my earliest election records reviews, the election facilitator (typically the property management company) had, by their own count, different results for each of their ten attempts in interpreting and validating proxy assignments and tallying votes.

I **support HB1651** with the following suggestion: rather than to encourage the use of proxies which do not provide the proxy-assignor the assurance that the proxy-assignee will vote as instructed, as the proxies used in associations are not limited proxies, give **owners the opportunity to vote directly for their candidates and for whatever matters may be addressed on the meeting agenda.**

Additionally, Robert's Rules of Order Newly Revised which is recognized in HRS5214B for procedural guidance does not condone the use of proxies nor absentee ballots:

RONR (12<sup>th</sup> ed.) 45:2 "One Person, One Vote...An individual member's right to vote may not be transferred to another person (for example, by the use of proxies)."

RONR (12<sup>th</sup> ed.) 56:56 "Absentee Voting. It is a fundamental principle of parliamentary law that the right to vote is limited to the members of an organization who are actually present at the time the vote is taken in a regular or properly called meeting...The votes of those present could be affected by debate, by amendments, and perhaps by the need for repeated balloting, while those absent would be unable to adjust their votes to reflect these factors. Consequently, the absentee ballots would in most cases be on a somewhat different question than that on which those present were voting, leading to confusion, unfairness, and inaccuracy in determining the result."

RONR (12 ed.) 45:60 "Proxy Voting...Ordinarily [proxy voting] should neither be allowed or required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable."

Because of the ubiquitous use of Zoom or other electronic meeting formats during the last two years, owners across the world can now participate directly in their associations' meetings and are able cast their own votes, nullifying the need for absentee ballots or proxies.

**HB-1651**

Submitted on: 2/1/2022 6:48:29 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
mary freeman	Individual	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Mary S. Freeman

Ewa Beach

**HB-1651**

Submitted on: 2/1/2022 6:52:49 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Jeff Sadino	Individual	Support	Yes

Comments:

**I STRONGLY SUPPORT HB1651.**

Thank you for bringing this important Bill up for a Hearing.

Voting “as a whole” is one of the most dangerous abuses of self-governance that has ever happened. It allows bad decisions by the Board to perpetuate until they finally come to light in some sort of nuclear endgame that harms all Association members of the entire state, not just the members of that one Association.

I was surprised to learn that Hawai’i has more successful lawsuits against Board members for negligence and breach of fiduciary duty than any other State in the country. This is not a number that is adjusted for population; it is an “absolute” number. This is mind blowing especially when you consider that Florida has TEN times more condominiums than we do, but the number of our Boards behaving badly still outnumber theirs by 1000%!

The industry advocates try to make the case that Board Members live on property and know what is best for the Association. They say that because a lot of Owners do not live on property, that those Owners should be allowed to let their Board vote on their behalf. This is what they say but their true objective is to keep a system in place that keeps qualified and well-intentioned Owners off of the Board just because that Owner criticizes the Board or the Managing Agent.

When a Board is found guilty of negligence and the insurance company has to pay out, the insurance company then increases the premiums for EVERY Association in the State. This is an issue that effects every person who lives in an Association, not just the members of that one Association.

The Judiciary has spoken on this topic. Voting “as a whole” needs to be eliminated and it needs to happen as soon as possible.

Thank You,

Jeff Sadino

RE: Committee on Consumer Protection & Commerce

February 3, 2022

**HB-1651**

Submitted on: 2/1/2022 9:34:18 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Marcia Kimura	Individual	Support	No

Comments:

I support this bill to discontinue the "board as a whole" option for association board elections, since it has made it difficult to replace incompetent board members with more dedicated individuals who have fresh, innovative ideas on management projects and goals.

I also believe it would be beneficial to the condominium's community to either hire a third party to count and audit voting, or to form a committee of non board member owners who oversee not only elections, but also project decision processes of boards.



**HB-1651**

Submitted on: 2/2/2022 8:09:53 AM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Paul A. Ireland Koftinow	Individual	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and Members of the Committee:

I respetfully **OPPOSE** H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Paul A. Ireland Koftinow

**HB-1651**

Submitted on: 2/2/2022 10:21:34 AM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Philip Nerney	Individual	Oppose	No

Comments:

There is no reasonable basis for depriving satisfied owners of the option to give a proxy to be voted on the basis of a preference of the Board majority. The critique that associations are essentially corrupt is unfounded. The advocates seek to enable an activist minority to take over associations, contrary to the wishes of majorities.

Current law allows owners to seek proxies for themselves. As in any political contest, it is their task to persuade owners to support their position.

## Dale A. Head

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Honolulu, Hawaii 96819

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[ [dale.head@aol.com](mailto:dale.head@aol.com) ]

### ***Aloha Hawaii State House of Representatives Committee on Consumer Protection and Commerce :***

**A.** I am offering testimony today in **SUPPORT** of **HB1651** for the following reasons:

1. There is wrongful manipulation of voting Proxies being perpetrated by some Property Managers within Association elections by certain management companies' in order to alter the outcome, a practice which is unethical. As this intrigue is not recognized by lawmakers, it has never been prohibited by statute.

2. Simple integrity of elections should matter, primarily by according members of Associations the right to cast their own vote, but, that is prohibited by **HRS514b-123** which imposes a requirement that they be physically present at a meeting to do so. As an alternative, a Proxy form is provided whereby they are encouraged to 'give away' their vote to another party. As a metric, **70%** of members do not reside on Association property because they are investors, many of whom reside in mainland states and several abroad in foreign countries. Now, about the Proxy form itself.

3. First in **1984**, during the administration of Governor George Ariyoshi, and then again in **1996**, when we had Governor Ben Cayetano, a business lobby guild had sought alteration of the state approved Proxy form to include a box to check off indicating assignment of an Association member's voting Proxy to the 'Board' of Directors. In testimony against this change to the form in 1996 our **Real Estate Commission warned** Legislators... "**We question if the amendment will provide for more abuse of proxies and whether a new set of problems will appear, such as a new type of proxies and/or more challenges to proxies**". That particular testimony is on file in our state Archives Office and was located by my colleague Ms. Lourdes Scheibert, whom I thank for finding and sharing it. How the 'abuse' happens I have first hand knowledge of and will describe here.

4. As we have, statewide, some 170,000+ condominiums which house more than a third of our state population, but, 70%, or 119,000 are 'investor' owned, that segment of people are urged to make out and return the Proxy. Due to their not knowing, personally, candidates running for election, they are quite likely to mark the box which specifies 'to the Board', rather than an individual they do not know. These Proxies are received by the Property Manager who does not reveal at a meeting the metric of how many were received. Even when about that, they are evasive and start talking about 'percentages'. These voting Proxies are held by the Manager, to be used on a standby basis,

5. When the number of candidates running for election is equal to the number of Board seats open, those Proxies assigned to the Board are moot and not used. When the number of candidates exceed the number of 'open' seats, then they are always used as a 'tie breaker'. However, the assignment/awarding of them to individuals is cloaked in secrecy and has the unfortunate effect of creating 'winners' from people whom in fact entered the meeting with fewer Proxies from owners assigned to them. This routinely alters the election outcome. Usually, the 'inner circle' of a Board is sustained in this manner, thereby keeping a majority of Board members in power whom else wise would have been turned out of Office. And, this is precisely why the category of 'to the Board' was created on the form. This machination is undemocratic. Members, and they are taxpayers, should be permitted to cast their own vote via ballot, or, not be beguiled into giving their voting Proxy blindly to a Manger who will use it without informing the member(s) of how they were used.

6. A very few people in different Associations have taken the time to review election documents to learn how these intrigues are perpetrated. The companies that do this are hired to process funds paid to maintain the property. Allowing them to also administer elections is an obvious conflict of interest.

7. When I audited such Proxies in 2018, I found **75** had been assigned to 'the Board as a whole', and another **26** to be divided equally between Board members present at the meeting to vote how they chose to. However, the two blocks of Proxies were kept as a single block and assigned to the two lowest scoring candidates, boosting them to have the highest 'count' thereby assuring their retention as incumbents. This prank, cloaked in secrecy at our meeting, blocked candidates who should have been seated. If we had an Office of Ombudsman to file a complaint with, this could have been corrected.

Instead, it stood. I also audited our 2019. Same thing happened again. The 'cure' for this nonsense would be respecting the right of owners to cast their own vote, prohibiting management companies that handle monies from also handling Association elections, and, at the minimum deleting from our state required Proxy form the category of 'to the Board' as in fact Board members, and attendees at meetings, are clueless about what the manager is doing with those Proxies which he is entrusted with. (Item - For me to audit the election materials required several visits as multiple obstacles were created by the company. It took three separate visits in 2018 and two in 2019. Those materials should be digitized, not destroyed, and made available online for any member to review, at no cost, since they have already paid for them.

**B.** For perspective, please know I had sent an email letter, in December of 2018, to both the House and Senate committees responsible for Consumer Protection about this very issue. This resulted in Bills to correct it. Those were SB724, introduced by **Senator Shimabukuro** (along with five co-sponsors) and HB347 introduced by **Representative Scott Saiki**. The House Bill passed without a single 'Nay' vote and I and several HOA members had testified in favor of it, in person. Once it 'crossed over' to the Senate it was blocked and killed. That was in 2019. For the 2021 Session, **Senator Lorraine Inouye** introduced the same Bill again, with seven co-sponsors, as **SB61**. Yep, it was blocked again. The companion House Bill, **HB221**, introduced by **Representative Yamani**, was voted down, keeping the lobbyists happy. Of particular note, this Bill was first subjected to 'Gut and Replace' altering the Bill completely. Fortunately the Hawaii Supreme Court recently ruled against this well known legislative device.

**C.** Item - When I testified before House Commerce & Consumer Protection on this issue in **2019**, and recited metrics from my HOA election documents review, one of the attorney/lobbyist present spoke up commenting that, "The law should not be changed for one rogue Board (of Directors)". Well, when 'comparing notes' with friends who reside in other condominium complexes, and who have also audited documents, they had the same experience. Meaning, it is a practice of more than just one company. And, our state Regulated Industries Complaint Office has testified they are not funded for Associations Elections challenges. As all Board positions are voluntary, unpaid, it does not make economic sense for an individual to engage a high priced private practice attorney and take such matters into state Civil Court.

**D.** Please approve **HB1651**. The effort to deprive management companies of this administrative tool to alter elections has been ongoing over many years. Legislators in 1984 and 1996 should not have altered the Proxy form when asked by the business lobby, instead, they could/should have enabled voting by mail, and now Online, in my opinion. Many Association members have tried for over a quarter of a century to get this done through their elected Legislators.

Mahalo Nul Loa !! - *Dale A. Head* 02 February 2022

**HB-1651**

Submitted on: 2/2/2022 12:43:39 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Joshua Hanzel	Individual	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Joshua Hanzel

**HB-1651**

Submitted on: 2/2/2022 1:13:06 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
R Laree McGuire	Individual	Oppose	No

Comments:

Oppose. The Board "as a whole" is often comprised of the individuals with the most knowledge on a particular issue and thus, should not be excluded as an option. Mahalo.

**HB-1651**

Submitted on: 2/2/2022 1:25:17 PM

Testimony for CPC on 2/3/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Lance S. Fujisaki	Individual	Oppose	No

Comments:

Dear Representative Johanson, Chair, Representative Kitigawa, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 1651 for the following reasons: Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” because that is the entity in which they faith and have confidence. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to an individual, they are free check one of the other boxes on the standard proxy form and to give their proxies to an individual of their choosing. The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person or entity to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984. Without any stated explanation, H.B. 1651 would serve to eliminate the box on standard proxy forms allowing owners to give their proxies to the board as a whole. There is no good reason for this change. Owners ought to be able to give their proxies to the board as a whole if they wish to do so and the Legislature should not interfere with that process. For the reasons stated herein I OPPOSE H.B. 1651.

Respectfully submitted,

Lance Fujisaki