

SB-2852

Submitted on: 2/11/2022 5:38:29 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Richard Emery	Testifying for CAI - Community Associations Institute	Oppose	No

Comments:

CAI supports measures that allow for more participation in voting. CAI recommends that a working task force be established to make recommendations for the following reasons:

- Associations usually vote by a percentage of common interest, often 6 decimal places.
- Director elections may allow for cumulative voting or stacking of votes for a candidate(s).
- Owners often assign a proxy holder but rescind the proxy at the meeting as the owner decided to attend. Proxies often go to the Board either as a majority or shared equally among Directors present.
- Directors are nominated at the meeting and often not known in advance.
- New Business not known in advance may be introduced at a meeting by an owner.
- Controls are necessary to make sure you can correctly identify that the person voting remotely is an owner authorized to vote.

The industry is working with voting software providers to address electronic voting, but such software is not yet available. By establishing a task force to carefully look at the voting and meeting issues is more prudent at this time.

HCCA

Hawaii Council of Community
Associations
www.hawaiicouncil.com

February 11, 2022

Senator Rosalyn Baker, Chair
Senator Stanley Chang, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: SB2852 Relating to Condominiums. Testimony in Support/with Comments
Wednesday, February 16, 2022 at 9:30 a.m.

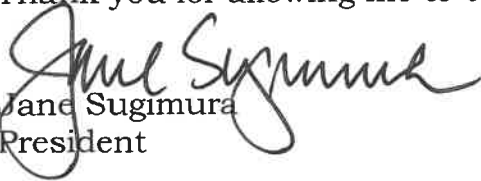
Chair Baker, Vice-Chair Chang and Members of the Committee:

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

HCCA supports this bill and asks that this bill be passed out with the amendments proposed by CAI that the bill be amended to establish a task force to seek input from stakeholders and report back to the Committee with recommendations as to how to establish the parameters for remote meetings and online voting.

HCCA recognizes that online meetings and voting is probably the future based on the available technology; however, because the process is relative new and may be subject to abuse, we believe that obtaining information from stakeholders is absolutely necessary to ensure that the process preserves transparency and allows owners to fully participate in these meetings.

Thank you for allowing me to testify on this bill.


Jane Sugimura
President

SB-2852

Submitted on: 2/13/2022 12:55:42 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Chandra Kanemaru	Testifying for Country Club Village AOA	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2852.

1. 2021, the legislature amended HRS Section 514B-121 to allow for electronic meetings and electronic, machine, or mail voting during periods of emergencies and when permitted by the declaration or bylaws. That change has worked well. S.B. 2852 will change the statute to allow members or proxies of members to vote my mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology without restriction, so long as the members can view and hear the proceedings, vote on matters submitted to the members of the association, pose questions, and make comments. This change will dictate that these additional methods of voting be allowed in non-emergency situations even if they are not preferred by the membership at large. It is better to leave the decision to the members by permitting them to amend their declaration or bylaws to allow for other methods of voting during non-emergency situations. For this reason, I urge the committee to defer the bill. However, if this bill is to move forward, it should be amended.

While this provision appears to have been fashioned after HRS Section 414D-101(g) and Section 414D-102(f), it is missing the critical language of those two statutory sections which provides that these alternative methods of voting may be used **“if authorized by the board in its sole discretion.”** Without the board having some control over the method of voting, there could be total chaos because this bill does not require that only a single method be used, nor does it state how the method will be determined. It appears to allow a hodgepodge of voting methods all at the same time. Without the board having some control over this, on any particular issue, some owners may insist on participating by internet, others may argue that accommodations must be made for them to participate by telephone, yet others may demand mail ballots, and some may demand to appear in person. It will be impossible to manage a voting by different methods all at the same time. This will undoubtedly lead to conflicts, disputes, and litigation.

I would also note that voting by mail and at a meeting for the same matter is prohibited by Robert’s Rules of Order, Newly Revised. Section 45:56 of Robert’s provides that “[a]n organization should never adopt a bylaw permitting a question to be decided by a voting

procedure in which the votes of persons who attend a meeting are counted together with ballots mailed in by absentees.”

I urge the committee to defer this bill, but if it is to be considered for adoption, at the very least, subsection (e) should be revised to state in relevant part:

“... Notwithstanding any provision to the contrary in the association’s declaration or bylaws or in subsection (b), if authorized by the board of directors in its sole discretion, members of the association or proxies of members [shall be allowed to] may vote by mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to: ...

A member of the association or proxy of a member participating in a meeting by means of internet, teleconference, or other electronic transmission technology shall be deemed to be present in person at the meeting. The association shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the internet, teleconference, or other electronic transmission technology is a member of the association or proxy of a member.

This change will make the provision more consistent with HRS Sections 101(f) and 102(g). Giving the power to select the voting method to the board will also enable the board to ensure an orderly method of voting, consistent with Robert’s Rules of Order, Newly Revised.

Respectfully submitted,

Chandra R. Kanemaru

Country Club Village AOA

SB-2852

Submitted on: 2/14/2022 11:16:33 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Resident Manager	Testifying for Honolulu Tower AOA	Oppose	No

Comments:

Honolulu Tower is a 396 unit condominium built in 1982. Our residents span all ages, from infants to centenarians. Among our owners are many who do not possess smart phones, computers, electronic devices nor do they know how to use such technology. Some rarely leave their apartment. To reach them with important information we do it the old fashioned way: paper delivered to the units.

At its meeting on February 7, 2022, the Association of Apartment Owners of Honolulu Tower Board of Directors voted to oppose this bill. Among objections there was concern that paper ballots would not be allowed, there was concern that candidates could not be nominated from the floor, there was concern that these provisions would be rammed down our throats without prior approval of at least 67% of the owners. These provisions were needed during lock down, during pandemic rules, etc. so associations could hold meetings, but there implementation since then should be by owner consent, not that of elected officials.



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

February 12, 2022

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Stanley Chang, Vice-Chair
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 230
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in OPPOSITION to SB2852; Hearing Date: February 16, 2022 at 9:30 a.m. in Senate conference room 229 and Zoom; sent via Internet

Aloha Chair Baker, Vice-Chair Chang, and Committee members,

Thank you for the opportunity to provide testimony on this bill. Unfortunately, I have a prior commitment this morning so may be unable to appear via videoconference, depending upon its completion.

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 SB2852.

Summary of Bill:

This Bill briefly proposes to:

- (a) grant associations the power to order an electronic meeting and electronic, machine, or mail vote notwithstanding anything to the contrary in the association's declaration or bylaws; and
- (b) remove the requirement that there be an emergency situation to justify this expanded power.

The bill does not address whether this new power is to be exercised by the board of directors, one or more owners, or by a decision of owners at a meeting.

Discussion:

HRS §514B-108 requires that the method of conducting association business **be in the association's bylaws**. This continues a long mandate wherein a recorded document, available to all owners and prospective buyers, specifies the method for an association to conduct its business.

The method of conducting association business was **overridden for emergency purposes only** last year (2021 Act 83). The legislature recognized the emergency nature of the pandemic and provided for an exemption from the association's governing documents based on an emergency declaration.

We know of no public policy consideration that would support this override of the governing documents of thousands of owners **when an emergency no longer exists**.

We have some experience with the voting and meeting permitted by Act 83. The change has been beneficial to Associations. However, they still need time to adjust to the current law. Currently none of the large management companies in Hawaii have used it for more than a selected few of their clients.

PRIOR to the pandemic, the only legislative alternative was to provide for electronic voting at a meeting without internet, thus reducing the chance of outside interference or hacking.

PRIOR to the pandemic, there was no significant push for legislative action to override an association's documents regarding the conduct of a meeting or avoidance of a meeting with a mail ballot.

The purpose of Act 83 was to permit relief during an emergency. **Non-emergency use could represent a significant change to condominium operations.**

Condominium associations can amend their documents if they want to have alternate methods of conducting meetings and voting. It's not easy to amend the documents, especially for large associations. However, large associations have successfully amended their documents. It takes time and a serious desire on the part of most of the owners to change their documents.

If an association's documents are unduly burdensome, the association can apply to a court for relief. HRS §514B-111 titled, "Judicial power to excuse compliance with requirements of declaration or bylaws" provides for relief under certain conditions while protecting members or lenders holding security interests.

There is ambiguity between the authority of the Board of Directors and the membership at a meeting regarding the conduct of an online, mail, or voting system. **The unilateral dictate of using or mixing this system outside of an emergency can be subject to abuse.**

The potential for abuse is contrary to the entire principle of condominium management. We **will not** provide a detailed roadmap for such abuse in written testimony.

Recommendation:

We ask that the Committee defer or hold this bill. Should the Committee decide to create a task force, we ask that several stakeholders participate to review and mitigate for any unintended consequences that will occur with such legislation.

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

Sincerely,

Steve Glanstein

Steve Glanstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee

SG:tbs

SB-2852

Submitted on: 2/14/2022 4:20:18 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dante Carpenter	Testifying for Country Club Village, Phase 2 (AOAO - 469 Units)	Oppose	No

Comments:

Sen. Baker, Chair. Sen Chang, V-C; Members of the Sen. Comm. CPN:

My recommendation is to defer this Bill. However, if proceeding - then, at the very least, subsection (e) should be revised to state in relevant part:

"... Notwithstanding any provision to the contrary in the association's declaration or bylaws or in subsection (b), if authorized by the board of directors in its sole discretion, members of the association or proxies of members [shall be allowed to] may vote by mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to: ...

A member of the association or proxy of a member participating in a meeting by means of internet, teleconference, or other electronic transmission technology shall be deemed to be present in person at the meeting. The association shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the internet, teleconference, or other electronic transmission technology is a member of the association or proxy of a member.

This change will make the provision more consistent with HRS Sections 101(f) and 102(g). Giving the power to select the voting method to the board will also enable the board to ensure an orderly method of voting consistent with Robert's Rules of Order, Newly Revised.

Respectfully submitted,

Dante Carpenter, Vice-Pres., CCV2, OAO

SB-2852

Submitted on: 2/14/2022 5:57:11 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mark McKellar	Testifying for Law Offices of Mark K. McKellar, LLLC	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2852.

1. 2021, the legislature amended HRS Section 514B-121 to allow for electronic meetings and electronic, machine, or mail voting during periods of emergencies and when permitted by the declaration or bylaws. That change has worked well. S.B. 2852 will change the statute to allow members or proxies of members to vote my mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology without restriction, so long as the members can view and hear the proceedings, vote on matters submitted to the members of the association, pose questions, and make comments. This change will dictate that these additional methods of voting be allowed in non-emergency situations even if they are not preferred by the membership at large. It is better to leave the decision to the members by permitting them to amend their declaration or bylaws to allow for other methods of voting during non-emergency situations. For this reason, I urge the committee to defer the bill. However, if this bill is to move forward, it should be amended.
1. this provision appears to have been fashioned after HRS Section 414D-101(g) and Section 414D-102(f), it is missing the critical language of those two statutory sections which provides that these alternative methods of voting may be used **“if authorized by the board in its sole discretion.”** Without the board having some control over the method of voting, there could be total chaos because this bill does not require that only a single method be used, nor does it state how the method will be determined. It appears to allow a hodgepodge of voting methods all at the same time. Without the board having some control over this, on any particular issue, some owners may insist on participating by internet, others may argue that accommodations must be made for them to participate

by telephone, yet others may demand mail ballots, and some may demand to appear in person. It will be impossible to manage a voting by different methods all at the same time. This will undoubtedly lead to conflicts, disputes, and litigation.

I would also note that voting by mail and at a meeting for the same matter is prohibited by Robert's Rules of Order, Newly Revised. Section 45:56 of Robert's provides that "[a]n organization should never adopt a bylaw permitting a question to be decided by a voting procedure in which the votes of persons who attend a meeting are counted together with ballots mailed in by absentees."

I urge the committee to defer this bill, but if it is to be considered for adoption, at the very least, subsection (e) should be revised to state in relevant part:

"... Notwithstanding any provision to the contrary in the association's declaration or bylaws or in subsection (b), if authorized by the board of directors in its sole discretion, members of the association or proxies of members [shall be allowed to] may vote by mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to: ...

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This change will make the provision more consistent with HRS Sections 101(f) and 102(g). Giving the power to select the voting method to the board will also enable the board to ensure an orderly method of voting, consistent with Robert's Rules of Order, Newly Revised.

Respectfully submitted,

Mark McKellar

Valerie Chang

700 Richards Street, Suite 2410

Honolulu, HI 96813

starion06@yahoo.com

February 14, 2022

Honorable Chair Senator Roz Baker
Honorable Vice-Chair Senator Stanley Chang
Members of the Committee of Commerce and Consumer Protection

RE: Strong Support of SB2852, Relating to Condominiums

Dear Senators Baker, Chang, and members of the Committee on Commerce and Consumer Protection,

This measure is extremely critical to our entire state so many of the people of Hawaii live in multi-unit dwellings, especially due to the very high cost and low availability of housing. **Please vote in favor of SB2852**, which will require condo associations to allow members of their proxies to vote by mail and attend and cast votes in association meetings through the internet, teleconference, or other electronic transmission technology. This will allow the owners to properly exercise their votes even if they are not physically present in the state at the time issues are being voted upon.

I am Executive Director of the Hawaii COPD Coalition and serve over 45,000 Hawaii adults diagnosed with COPD in Hawaii (with an estimated equal number still undiagnosed). Chronic Obstructive Pulmonary Disease or COPD is an umbrella of diseases which include emphysema, chronic bronchitis and chronic asthma. Since 2007, I have worked in Hawaii, nationally and internationally with countless people who have had their lungs and lives horribly affected by tobacco and nicotine. Many of these people have become disabled and unable to perform jobs and hobbies they enjoyed, spending a lot more time and resources with healthcare providers and requiring support from society than they or any of us would like

This bill is especially important to assist people who want to enact rules in their condominiums so they and their tenants can have clean air to breathe in their units and common areas. When owners are absent and have no means of voting by mail, electronically, or otherwise, their silence and not voting is counted as a "no" vote, whether or not the owner prefers to have a smoke-free condo building or not.

Thank you for taking this seriously and offering this common-sense way for owners to exercise their right to vote on important issues regarding the condo units they own. Once again, thank you for hearing this matter and I urge you to **vote in favor of SB2852 and help this bill to become law as quickly as possible.**

Very truly yours,

Valerie Chang

Valerie Chang

SB-2852

Submitted on: 2/15/2022 7:00:17 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Grant Oka	Testifying for Kipuka at Hoakalei AOOU	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2852.

In 2021, the legislature amended HRS Section 514B-121 to allow for electronic meetings and electronic, machine, or mail voting during periods of emergencies and when permitted by the declaration or bylaws. That change has worked well. S.B. 2852 will change the statute to allow members or proxies of members to vote my mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology without restriction, so long as the members can view and hear the proceedings, vote on matters submitted to the members of the association, pose questions, and make comments. This change will dictate that these additional methods of voting be allowed in non-emergency situations even if they are not preferred by the membership at large. It is better to leave the decision to the members by permitting them to amend their declaration or bylaws to allow for other methods of voting during non-emergency situations. For this reason, I urge the committee to defer the bill.

Respectfully submitted,

Grant Oka

President, Kipuka at Hoakalei AOOU



HIPHI Board

Kilikina Mahi, MBA
Chair
KM Consulting LLC

JoAnn Tsark, MPH
Secretary
John A. Burns School of Medicine,
Native Hawaiian Research Office

Debbie Erskine
Treasurer

Keshia Adolpho, LCSW
Molokai Community Health Center

Camonia Graham - Tutt, PhD
University of Hawai'i - West O'ahu

Carissa Holley, MEd
Hale Makua Health Services

May Okihiro, MD, MS
John A. Burns School of Medicine,
Department of Pediatrics

Misty Pacheco, DrPH
University of Hawai'i at Hilo

Michael Robinson, MBA, MA
Hawai'i Pacific Health

Kathleen Roche, MS, RN, CENP
Kaiser Permanente

Dina Shek, JD
Medical-Legal Partnership
For Children in Hawai'i

Garret Sugai

Titiiamae Ta'ase, JD
State of Hawai'i, Deputy Public Defender

HIPHI Initiatives

Coalition for a
Tobacco-Free Hawai'i

Community Health
Worker Initiative

COVID-19 Response

Hawai'i Drug & Alcohol Free
Coalitions

Hawai'i Farm to School Hui

Hawai'i Oral Health Coalition

Hawai'i Public Health Training Hui

Healthy Eating + Active Living

Kūpuna Food Security Coalition

Date: February 15, 2022

To: Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
Members of the Senate Committee on Commerce and
Consumer Protection

Re: Support for SB 2852, Relating to Condominiums

Hrg: February 16, 2022 at 9:30 AM via Videoconference

The Coalition for a Tobacco-Free Hawai'i, a program of the Hawai'i Public Health Instituteⁱ, is in **support of SB 2852**, which would require condominium associations to allow members or their proxies to vote by mail and attend and cast votes in association meetings through the internet, teleconference, or other electronic transmission technology. The Coalition believes this change could make it easier for condominiums to adopt smoke-free policies.

Condominium and apartment residents are suffering from secondhand smoke, a known carcinogen, with little recourse.

The Coalition receives calls from residents who reside in multi-unit housing and who have asthma and other health issues affected by secondhand smoke exposure. The Coalition supports efforts that will encourage any multi-unit dwelling to go smoke-free. For condominiums, this can involve changing the bylaws, which requires a vote or written consent of at least 67% of all unit owners. These bylaw amendments can fail not from lack of support (often the majority of returned votes are in support of the smoke-free policy), but because not enough owners return the ballot in time. Making it easier for condominium association members to cast ballots electronically could help associations adopt smoke-free policies.

The Coalition strongly supports measures that reduce exposure to secondhand and thirdhand smoke.

There is no safe level of exposure to secondhand smoke, and according to the U.S. Surgeon General, even brief exposure to secondhand smoke is dangerous and can be harmful.ⁱⁱ Inhaling secondhand smoke can have immediate detrimental effects on cardiovascular health, damaging blood vessels and increasing the risk of heart attack and stroke.ⁱⁱⁱ

Secondhand smoke is also responsible for an estimated 46,000 premature deaths from heart disease and 3,400 lung cancer deaths in the United States among **nonsmokers** annually.^{iv} Infants and young children are especially vulnerable to these toxic chemicals, and exposure to secondhand smoke during pregnancy and after birth leaves them at an increased risk of Sudden Infant Death Syndrome (SIDS), poor lung development, and more frequent and severe asthma attacks, respiratory infections, and ear infections.^v

Thirdhand smoke, which is the residual tobacco toxins that remain after a cigarette is extinguished, clings to walls, ceilings, carpets, draperies, and other furniture. They remain at high levels long after smoking has stopped and has shown to re-emit back in the air as toxic compounds that can be inhaled by those that have moved into the home.^{vi} Babies and small children are especially at risk, because they breathe near, crawl, lay on, and touch contaminated surfaces.

Eliminating smoking is the only way to protect people from secondhand smoke.

Opening windows, air purifiers, and filters, cannot prevent secondhand smoke from traveling. Smoke can infiltrate neighboring units through windows, vents, and outlets. For multi-unit housing, up to 65% of the air is shared between units. In these types of properties, a smoke-free policy is the only way to fully protect residents from secondhand smoke.

Smoke-free housing is a growing trend across the nation and in Hawai'i. An independent poll^{vii} conducted by Ward Research Inc. for the Coalition, in October 2021 found that 89% of registered Hawai'i voters would choose to buy or rent a smoke-free house or apartment.

Thank you for the opportunity to testify in **support** of SB 2853.

Mahalo,



Amanda Fernandes, JD
Policy and Advocacy Director

ⁱ The Coalition for a Tobacco-Free Hawai'i (Coalition) is a program of the Hawai'i Public Health Institute (HIPHI) dedicated to reducing tobacco use through education, policy, and advocacy. With more than two decades of history in Hawai'i, the Coalition has led several campaigns on enacting smoke-free environments, including being the first state in the nation to prohibit the sale of tobacco and electronic smoking devices to purchasers under 21 years of age.

The Hawai'i Public Health Institute is a hub for building healthy communities, providing issue-based advocacy, education, and technical assistance through partnerships with government, academia, foundations, business, and community-based organizations.

ⁱⁱ U.S. Department of Health and Human Services (2010). *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: What it Means to You*, a Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. <https://www.ncbi.nlm.nih.gov/books/NBK53017/>

ⁱⁱⁱ U.S. Department of Health and Human Services. *A Report of the Surgeon General: How Tobacco Smoke Causes Disease: What It Means to You*. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010 [accessed 2017 Jan 11].

^{iv} U.S. Centers for Disease Control and Prevention (2011). *Smoking and Tobacco Use: Health Effects of Secondhand Smoke*. Retrieved April 20, 2011, from www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm

^v U.S. Department of Health and Human Services (2006). *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. <http://www.surgeongeneral.gov/library/secondhandsmoke/report/>

^{vi} Singer, B., Hodgson, A., Nazaroff, W. (2002). "Effect of absorption on exposures to organic gases from environmental tobacco smoke (ETS)" available at <http://eetd.lbl.gov/node/49332>

^{vii} This study by Ward Research, Inc. summarizes findings from a phone survey among n=805 Hawai'i registered voters (maximum sampling error +/-3.3%), conducted between October 7 - October 26, 2021.

Senate
Committee on Commerce and Consumer Protection
Wednesday, February 16, 2022
9:30 a.m.

To: Chair Rosalyn Baker
Re: SB2852, Relating to Condominiums

Aloha Chair Baker, Vice-Chair Chang, 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 throughout Hawaii and served as an officer on three condominium associations' boards.

Additionally, I wrote a commentary that appeared this past Sunday in the Star-Advertiser under their title, "State Must Address HOA Owners' Plight;" a copy of the original unedited draft which was submitted to the newspaper is attached to this testimony.

I support SB2852 for the following reasons:

In 2020, Hawaii's Office of Elections reported that the mail-in ballot turnout was a record-breaking 98.7% of overall voter turnout. A similar direct-voting-by-ballot method, by postal mail and electronic mail, with an auditable document trail, would benefit, engage, and empower more condominium homeowners than the current condominium association electoral process, and would obviate the need for proxy assignments. The mail-in ballot process aligns with the popular use of Zoom and other electronic meeting formats which allows more owners across the world to participate directly in their associations' meetings.

Legislators should also ensure that association elections are facilitated by neutral professional third parties who do not have any interest in the outcome of association elections, can maintain election integrity, and can oversee the electoral process to assure owners that the election is fair and the results are accurate.

While the use of proxies may lead owners to feel that they are represented and proponents of proxy usage claim that the four standard proxy options enumerated in HRS514B offer owners "free choice," **the more removed a voter is from the actual casting of his vote, the greater the possibility of nefarious interference and loss of choice.** The authorized proxy forms provided by property management companies are "general" proxies that allow the proxy holder to vote however the holder wants and "for the transaction of any business that may come before the Meeting, including but not limited to the election and re-election of the Board of Directors" (or similar verbiage), and are not "directed" proxies that instruct the proxy holder how to vote.

Personal examination of condominium associations' election records from the period 2014 through 2019 (more recent examinations were halted because of the pandemic) revealed that acquiring franchise-by-proxy-assignments in these condominium associations was highly problematic. The

appearance of improper electoral processes was found to occur primarily at the property management company level as they were the facilitators of those association elections despite their pecuniary interest in the election results.

Some of these observations were:

- (a) voiding valid proxies and accepting invalid proxies for use, which may be discounted as human error, but both actions were noticeably tilted towards board incumbents;
- (b) misplacing proxies and ballots which mishandling coincidentally favored incumbents; and
- (c) the omission of valid proxies from final tabulation so that fulfilling the quorum requirement would appear to have failed, which then allowed incumbent boards to continue their associations' business until the next election.

Also, associations' onsite management, legally prohibited from soliciting proxies for their use as assignees, was witnessed to sidestep the law by directing owners to select proxy options that were favorable to incumbents. Those owners reported that they felt pressured to accede to these "recommendations" for fear of mistreatment or of losing services to which they are properly entitled.

In 2017, a founding member of Hui 'Oia'i'o initiated a measure which became Act 073, https://www.capitol.hawaii.gov/session2017/bills/GM1174_PDF. The genesis for this Act was the result of election records reviews which revealed the inclusion of a phrase into the standard proxies used by at least two major property management companies: "If no proxy holder is designated, or if no box is checked, or if more than one box is checked, the proxy shall be given to the Board of Directors as a whole."

That simple phrase allowed easy alteration of proxy documents by the addition of a second checked box by someone other than the proxy assignor, giving the "Board as a whole" the use of that proxy's voting power, and improperly affecting the election.

It was also this improper act that brought to the Hui's attention the significance of proxy assignments to the associations' boards and the magnitude of exploitation that could occur:

Empowered by the use of proxies assigned to them, some association boards--unbeknownst to most of their members but confidentially revealed by "minority" directors—have funded extravagant after-meeting-dinners; leased association property to directors, their family, or their friends at below-market rents; purchased properties in their association's names which were then transferred to a board director or a related party; and amended their governing documents.

Additionally, Robert's Rules of Order Newly Revised which is recognized in HRS514B for procedural guidance does not condone the use of proxies nor absentee ballots:

RONR (12th 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 (12th ed.) 45:56 "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.) 45:70 “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.”

Stalin allegedly said, “It is enough that the people know there was an election. The people who cast the votes decide nothing. The people who count the votes decide everything.”

Hawaii’s legislators must do better and protect the enfranchisement of condominium owners.

For these reasons and more, I support SB2852.

Mahalo for the opportunity to testify.

HAWAII CONDOMINIUM OWNERS' UPHILL BATTLE AGAINST THE STATUS QUO

written and submitted to the Star-Advertiser by Lila Mower

(edited by and published in the Star-Advertiser on February 13, 2022, under a different title)

According to Hawaii's Department of Commerce and Consumer Affairs, there are over 1800 registered condominium associations which include over 173,000 condominium units. Combined with DBEDT and Census data, approximately 1/3 (one-third) of Hawaii's population are condominium owners and residents.

Association-governed communities--which include condominiums, planned community associations, and cooperatives--also known as "homeowners' associations" (HOA), are the fastest growing housing segment in Hawaii. The HOA development model optimizes density and utilizes shared infrastructure and shared common expenses, which serves to offset Hawaii's extremely high housing costs and reduces public infrastructure costs.

Despite benefits which flow from these communities to the rest of the State, Hawaii's HOA owners are in a highly vulnerable situation as our government openly favors the interests of those who profit from the HOA-industry over the needs of those who reside in and own association-governed units.

When HOA owners sought government's assistance to resolve systemic problems, lobbyists who represent property managers and association attorneys' interests insisted that government oversight would subvert associations' "self-governance," allowing abusive practices to be overlooked because of biased representation.

Condominium- and other HOA issues affect Hawaii residents' rights, finances, and daily lives, more personally than almost any other issue. Despite the usual reticence of the local population to "create waves," complaints from HOA owners and residents have been so numerous that, in 2020 alone, the DCCA received nearly 50,000 requests for assistance from "condo owners and interested parties."

HOA owners' vulnerability to abusive practices is further evidenced by an unnerving statement made by local insurance experts: despite our state's comparatively minute population, Hawaii has more D&O insurance claims than any other state.

Hawaii's government does little to address these concerns. The DCCA is merely administrative. It registers condominiums but does not regulate them and has minimal oversight of property management companies, requiring only one person per company to hold an irrelevant real estate broker's license.

Owners in Hawaii's homeowners' associations pay several billion dollars each year to property management companies to oversee administrative, managerial, and financial tasks, and to maintain the physical property. Such a significant industry should have proper oversight for consumer protections but continues with minimal requirements.

Among their practices, property management firms may levy fees that require no detailed billing statements; and if unpaid because disputed, a lien may be placed on the property, requiring payment before sale of the property. Usurious interest charges and unreasonable attorneys' fees may be tacked onto those contested fees. Compare those practices with owners' attempts to enforce violations of the statutes committed by an association's board: these owners are required to use the court system, stacking their limited resources against the association's almost unlimited ability to access financial and legal resources.

Reform of association-governed communities does not necessarily involve any taxpayer funding because it can be self-funded using the Condo Education Trust Fund (CETF) fees mandated from condominium-owners, and to which other HOA owners may similarly contribute. The current CETF fee is an affordable \$5 per unit per biennium. Such reform should eliminate many abusive practices for which owners pay through increased association fees, including attorneys' fees, legal fees, and rising costs for association boards' D&O insurance policies.

The savings to consumers would far exceed the cost to administer the program.

HOA reform is needed to improve the quality of life and the costs of homeownership. But with only unfunded grassroot organizations pushing back against condo-industry lobbyists who seek to preserve their pecuniary interests rather than the needs of HOA owners, this effort is a long drawn, uphill battle.

SB-2852

Submitted on: 2/11/2022 9:38:35 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Marcia Kimura	Individual	Support	No

Comments:

I support this measure which would end disenfranchisement of owners who cannot be present at association meetings.

I would also like to see a third party audit voting procedures and results which should be mailed to owners for their inspection, The auditing staff should be available to answer questions regarding the voting process, the count, and anything that appears to be out of order.

SB-2852

Submitted on: 2/12/2022 4:40:01 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
lynne matusow	Individual	Oppose	No

Comments:

I am an occupant owner of a condominium. I have lived in my unit since 1988. I am also on the board of directors. I have attended association meetings for all this time. I have seen the chaos that can exist when owners, year after year, do not understand the same simple procedures. Prior chaos will have been a cake walk if this passes.

It is not clear from the bill if nominations can be made from the floor. We always have nominations from the floor. In 2021 several persons were nominated and were elected due to that procedure. A mail ballot would preclude that. We always announce the election results at the meeting. A mail ballot will preclude that. We do not vote electronically. Many of our members are uneducated in the use of smart phones, tablets, computers, etc. This bill will disenfranchise them. They will vociferously object at the meeting probably forcing a recess or adjournment. Remember, this is their home. It is also a major financial investment. They will not take this lightly.

We have amended our governing documents several times in recent years, including a total smoking ban which took effect May 5, 2021. These drastic changes cannot be rammed down our throats, It is up to the owners to decide if they want such changes, pursuant to an affirmative vote by at least 67% of the owners, not to elected officials, many of whom do not own property or live in common interest communities. Some could easily state this is a taking of their rights.

I urge you to defer this bill, now.

SB-2852

Submitted on: 2/12/2022 7:23:36 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
mary freeman	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2852.

In 2021, the legislature amended HRS Section 514B-121 to allow for electronic meetings and electronic, machine, or mail voting during periods of emergencies and when permitted by the declaration or bylaws. That change has worked well. S.B. 2852 will change the statute to allow members or proxies of members to vote by mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology without restriction, so long as the members can view and hear the proceedings, vote on matters submitted to the members of the association, pose questions, and make comments. This change will dictate that these additional methods of voting be allowed in non-emergency situations even if they are not preferred by the membership at large. It is better to leave the decision to the members by permitting them to amend their declaration or bylaws to allow for other methods of voting during non-emergency situations. For this reason, I urge the committee to defer the bill. However, if this bill is to move forward, it should be amended.

While this provision appears to have been fashioned after HRS Section 414D-101(g) and Section 414D-102(f), it is missing the critical language of those two statutory sections which provides that these alternative methods of voting may be used **“if authorized by the board in its sole discretion.”** Without the board having some control over the method of voting, there could be total chaos because this bill does not require that only a single method be used, nor does it state how the method will be determined. It appears to allow a hodgepodge of voting methods all at the same time. Without the board having some control over this, on any particular issue, some owners may insist on participating by internet, others may argue that accommodations must be made for them to participate by telephone, yet others may demand mail ballots, and some may demand to appear in person. It will be impossible to manage a voting by different methods all at the same time. This will undoubtedly lead to conflicts, disputes, and litigation.

I would also note that voting by mail and at a meeting for the same matter is prohibited by Robert's Rules of Order, Newly Revised. Section 45:56 of Robert's provides that "an organization should never adopt a bylaw permitting a question to be decided by a voting procedure in which the votes of persons who attend a meeting are counted together with ballots mailed in by absentees."

I urge the committee to defer this bill, but if it is to be considered for adoption, at the very least, subsection (e) should be revised to state in relevant part:

"... Notwithstanding any provision to the contrary in the association's declaration or bylaws or in subsection (b), if authorized by the board of directors in its sole discretion, members of the association or proxies of members [shall be allowed to] may vote by mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to: ...

A member of the association or proxy of a member participating in a meeting by means of internet, teleconference, or other electronic transmission technology shall be deemed to be present in person at the meeting. The association shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the internet, teleconference, or other electronic transmission technology is a member of the association or proxy of a member.

This change will make the provision more consistent with HRS Sections 101(f) and 102(g). Giving the power to select the voting method to the board will also enable the board to ensure an orderly method of voting, consistent with Robert's Rules of Order, Newly Revised.

Respectfully submitted,

Mary Freeman

Ewa Beach

SB-2852

Submitted on: 2/14/2022 6:38:58 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lance S. Fujisaki	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2852.

In 2021, the legislature amended HRS Section 514B-121 to allow for electronic meetings and electronic, machine, or mail voting during periods of emergencies and when permitted by the declaration or bylaws. That change has worked well. S.B. 2852 will change the statute to allow members or proxies of members to vote my mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology without restriction, so long as the members can view and hear the proceedings, vote on matters submitted to the members of the association, pose questions, and make comments. This change will dictate that these additional methods of voting be allowed in non-emergency situations even if they are not preferred by the membership at large. It is better to leave the decision to the members by permitting them to amend their declaration or bylaws to allow for other methods of voting during non-emergency situations. For this reason, I urge the committee to defer the bill. However, if this bill is to move forward, it should be amended.

While this provision appears to have been fashioned after HRS Section 414D-101(g) and Section 414D-102(f), it is missing the critical language of those two statutory sections which provides that these alternative methods of voting may be used **"if authorized by the board in its sole discretion."** Without the board having some control over the method of voting, there could be total chaos because this bill does not require that only a single method be used, nor does it state how the method will be determined. It appears to allow a hodgepodge of voting methods all at the same time. Without the board having some control over this, on any particular issue, some owners may insist on participating by internet, others may argue that accommodations must be made for them to participate by telephone, yet others may demand mail ballots, and some may demand to appear in person. It will be impossible to manage a voting by different methods all at the same time. This will undoubtedly lead to conflicts, disputes, and litigation.

I would also note that voting by mail and at a meeting for the same matter is prohibited by Robert's Rules of Order, Newly Revised. Section 45:56 of Robert's provides that "[a]n organization should never adopt a bylaw permitting a question to be decided by a voting procedure in which the votes of persons who attend a meeting are counted together with ballots mailed in by absentees."

I urge the committee to defer this bill, but if it is to be considered for adoption, at the very least, subsection (e) should be revised to state *in relevant part*:

"... Notwithstanding any provision to the contrary in the association's declaration or bylaws or in subsection (b), *if authorized by the board of directors in its sole discretion*, members of the association or proxies of members [shall be allowed to] may vote by mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to: ...

A member of the association or proxy of a member participating in a meeting by means of internet, teleconference, or other electronic transmission technology shall be deemed to be present in person at the meeting. The association shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the internet, teleconference, or other electronic transmission technology is a member of the association or proxy of a member.

This change will make the provision more consistent with HRS Sections 101(f) and 102(g). Giving the power to select the voting method to the board will also enable the board to ensure an orderly method of voting, consistent with Robert's Rules of Order, Newly Revised.

Respectfully submitted,
Lance Fujisaki

SB-2852

Submitted on: 2/14/2022 8:30:11 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Laurence Sussman	Individual	Oppose	No

Comments:

February 14, 2022

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2852.

1. 2021, the legislature amended HRS Section 514B-121 to allow for electronic meetings and electronic, machine, or mail voting during periods of emergencies and when permitted by the declaration or bylaws. That change has worked well. S.B. 2852 will change the statute to allow members or proxies of members to vote my mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology without restriction, so long as the members can view and hear the proceedings, vote on matters submitted to the members of the association, pose questions, and make comments. This change will dictate that these additional methods of voting be allowed in non-emergency situations even if they are not preferred by the membership at large. It is better to leave the decision to the members by permitting them to amend their declaration or bylaws to allow for other methods of voting during non-emergency situations. For this reason, I urge the committee to defer the bill. However, if this bill is to move forward, it should be amended.
1. this provision appears to have been fashioned after HRS Section 414D-101(g) and Section 414D-102(f), it is missing the critical language of those two statutory sections which provides that these alternative methods of voting may be used **“if authorized by the board in its sole discretion.”** Without the board having some control over the method of voting, there could be total chaos because this bill does not require that only a single method be used, nor does it state how the method will be determined. It appears to allow a hodgepodge of voting methods all at the same time. Without the board having

some control over this, on any particular issue, some owners may insist on participating by internet, others may argue that accommodations must be made for them to participate by telephone, yet others may demand mail ballots, and some may demand to appear in person. It will be impossible to manage a voting by different methods all at the same time. This will undoubtedly lead to conflicts, disputes, and litigation.

I would also note that voting by mail and at a meeting for the same matter is prohibited by Robert's Rules of Order, Newly Revised. Section 45:56 of Robert's provides that "[a]n organization should never adopt a bylaw permitting a question to be decided by a voting procedure in which the votes of persons who attend a meeting are counted together with ballots mailed in by absentees."

I urge the committee to defer this bill, but if it is to be considered for adoption, at the very least, subsection (e) should be revised to state in relevant part:

"... Notwithstanding any provision to the contrary in the association's declaration or bylaws or in subsection (b), if authorized by the board of directors in its sole discretion, members of the association or proxies of members [shall be allowed to] may vote by mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to: ...

A member of the association or proxy of a member participating in a meeting by means of internet, teleconference, or other electronic transmission technology shall be deemed to be present in person at the meeting. The association shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the internet, teleconference, or other electronic transmission technology is a member of the association or proxy of a member.

This change will make the provision more consistent with HRS Sections 101(f) and 102(g). Giving the power to select the voting method to the board will also enable the board to ensure an orderly method of voting, consistent with Robert's Rules of Order, Newly Revised.

Respectfully submitted,

Laurence Sussman General Manager Villages of Kapolei Association

91-1111 Kama'aha Loop

Kapolei, HI 96707

SB-2852

Submitted on: 2/14/2022 10:07:19 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Philip Nerney	Individual	Comments	No

Comments:

A task force should be considered before adopting this bill.

Unintended consequences could follow, including potential abuse.

SB-2852

Submitted on: 2/14/2022 11:20:47 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Anne Anderson	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2852.

In 2021, the legislature amended HRS Section 514B-121 to allow for electronic meetings and electronic, machine, or mail voting during periods of emergencies and when permitted by the declaration or bylaws. That change has worked well. S.B. 2852 will change the statute to allow members or proxies of members to vote my mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology without restriction, so long as the members can view and hear the proceedings, vote on matters submitted to the members of the association, pose questions, and make comments. This change will dictate that these additional methods of voting be allowed in non-emergency situations even if they are not preferred by the membership at large. It is better to leave the decision to the members by permitting them to amend their declaration or bylaws to allow for other methods of voting during non-emergency situations. For this reason, I urge the committee to defer the bill. However, if this bill is to move forward, it should be amended.

While this provision appears to have been fashioned after HRS Section 414D-101(g) and Section 414D-102(f), it is missing the critical language of those two statutory sections which provides that these alternative methods of voting may be used **“if authorized by the board in its sole discretion.”** Without the board having some control over the method of voting, there could be total chaos because this bill does not require that only a single method be used, nor does it state how the method will be determined. It appears to allow a hodgepodge of voting methods all at the same time. Without the board having some control over this, on any particular issue, some owners may insist on participating by internet, others may argue that accommodations must be made for them to participate by telephone, yet others may demand mail ballots, and some may demand to appear in person. It will be impossible to manage a voting by different methods all at the same time. This will undoubtedly lead to conflicts, disputes, and litigation.

I would also note that voting by mail and at a meeting for the same matter is prohibited by Robert’s Rules of Order, Newly Revised. Section 45:56 of Robert’s provides that “[a]n organization should never adopt a bylaw permitting a question to be decided by a voting procedure in which the votes of persons who attend a meeting are counted together with ballots mailed in by absentees.”

I urge the committee to defer this bill, but if it is to be considered for adoption, at the very least, subsection (e) should be revised to state in relevant part:

“... Notwithstanding any provision to the contrary in the association’s declaration or bylaws or in subsection (b), if authorized by the board of directors in its sole discretion, members of the association or proxies of members [shall be allowed to] may vote by mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to: ...”

"A member of the association or proxy of a member participating in a meeting by means of internet, teleconference, or other electronic transmission technology shall be deemed to be present in person at the meeting. The association shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the internet, teleconference, or other electronic transmission technology is a member of the association or proxy of a member."

This change will make the provision more consistent with HRS Sections 101(f) and 102(g). Giving the power to select the voting method to the board will also enable the board to ensure an orderly method of voting, consistent with Robert’s Rules of Order, Newly Revised.

Respectfully submitted,

M. Anne Anderson

SB-2852

Submitted on: 2/14/2022 12:57:13 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
mary santa maria	Individual	Support	No

Comments:

Dear Senators,

Condo owners now face a frustrating situation that will not let them or their proxies vote electronically, or through phone calls, on a smoke free policy for their condo complex. Please **pass SB2852** as it will make it so that absent condo owners or their proxy can have their say regarding a smoke free condo, COVID 19 has exacerbated this situation with many people working from home, and the second hand smoke from other units has made this an issue as never before. This bill will make it easier to create a second hand smoke free environment for those working at home, and all others who would like to live second hand smoke free. It will also make it easier for owners to vote their opinion.

Thank you,

Mary Santa Maria, MS, MPH

Makawao, Hi, 96768

SB-2852

Submitted on: 2/14/2022 1:20:36 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kristin Mills	Individual	Support	No

Comments:

I am in support of SB2852. In order for these associations to set new rules, they need a certain percentage of members to vote YES. Non-voters are automatically considered as a NO vote. With all the new technologies available, members should be able to vote in other means than in person. Please support SB2852 requiring associations to allow members to vote in other ways than in person.

Sincerely, Kristin Mills

SB-2852

Submitted on: 2/14/2022 2:34:14 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Brittany Dayton	Individual	Support	No

Comments:

From my work experience (hearing patient's complain of bad air quality) and having experienced this first hand as a renter/home owner, people are suffering from secondhand smoke in their homes. Oahu communities are very tight, so the lightest breeze while bring in unwanted smells and smoke from neighbor's homes/units. Non-tobacco/nicotine users should not have to suffer the negative consequences of their neighbor's choices and actions. We deserve clean air.

SB-2852

Submitted on: 2/14/2022 3:29:46 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Bryan Mih	Individual	Support	No

Comments:

Aloha,

As a pediatrician, I have families with children that are exposed to secondhand smoke in multi-unit housing such as condominiums. This bill would help make it easier for busy parents and other family members who own condos to participate in the decision-making process, including making condos smoke-free, which would be beneficial for infants, children, pregnant women, and all other household members.

Mahalo,

Bryan Mih, MD MPH FAAP

Pediatrician

SB-2852

Submitted on: 2/14/2022 5:25:15 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Carol Walker	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2852.

1. 2021, the legislature amended HRS Section 514B-121 to allow for electronic meetings and electronic, machine, or mail voting during periods of emergencies and when permitted by the declaration or bylaws. That change has worked well. S.B. 2852 will change the statute to allow members or proxies of members to vote my mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology without restriction, so long as the members can view and hear the proceedings, vote on matters submitted to the members of the association, pose questions, and make comments. This change will dictate that these additional methods of voting be allowed in non-emergency situations even if they are not preferred by the membership at large. It is better to leave the decision to the members by permitting them to amend their declaration or bylaws to allow for other methods of voting during non-emergency situations. For this reason, I urge the committee to defer the bill. However, if this bill is to move forward, it should be amended.
1. this provision appears to have been fashioned after HRS Section 414D-101(g) and Section 414D-102(f), it is missing the critical language of those two statutory sections which provides that these alternative methods of voting may be used **“if authorized by the board in its sole discretion.”** Without the board having some control over the method of voting, there could be total chaos because this bill does not require that only a single method be used, nor does it state how the method will be determined. It appears to allow a hodgepodge of voting methods all at the same time. Without the board having some control over this, on any particular issue, some owners may insist on participating by internet, others may argue that accommodations must be made for them to participate by telephone, yet others may demand mail ballots, and some may demand to appear in person. It will be impossible to manage a voting by different methods all at the same time. This will undoubtedly lead to conflicts, disputes, and litigation.

I would also note that voting by mail and at a meeting for the same matter is prohibited by Robert's Rules of Order, Newly Revised. Section 45:56 of Robert's provides that "[a]n organization should never adopt a bylaw permitting a question to be decided by a voting procedure in which the votes of persons who attend a meeting are counted together with ballots mailed in by absentees."

I urge the committee to defer this bill, but if it is to be considered for adoption, at the very least, subsection (e) should be revised to state in relevant part:

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A member of the association or proxy of a member participating in a meeting by means of internet, teleconference, or other electronic transmission technology shall be deemed to be present in person at the meeting. The association shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the internet, teleconference, or other electronic transmission technology is a member of the association or proxy of a member.

This change will make the provision more consistent with HRS Sections 101(f) and 102(g). Giving the power to select the voting method to the board will also enable the board to ensure an orderly method of voting, consistent with Robert's Rules of Order, Newly Revised.

Respectfully submitted,

Carol Walker

SB-2852

Submitted on: 2/14/2022 6:11:07 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

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

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2852.

In 2021, the legislature amended HRS Section 514B-121 to allow for electronic meetings and electronic, machine, or mail voting during periods of emergencies and when permitted by the declaration or bylaws. That change has worked well. S.B. 2852 will change the statute to allow members or proxies of members to vote my mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology without restriction, so long as the members can view and hear the proceedings, vote on matters submitted to the members of the association, pose questions, and make comments. This change will dictate that these additional methods of voting be allowed in non-emergency situations even if they are not preferred by the membership at large. It is better to leave the decision to the members by permitting them to amend their declaration or bylaws to allow for other methods of voting during non-emergency situations. For this reason, I urge the committee to defer the bill. However, if this bill is to move forward, it should be amended.

While this provision appears to have been fashioned after HRS Section 414D-101(g) and Section 414D-102(f), it is missing the critical language of those two statutory sections which provides that these alternative methods of voting may be used **“if authorized by the board in its sole discretion.”** Without the board having some control over the method of voting, there could be total chaos because this bill does not require that only a single method be used, nor does it state how the method will be determined. It appears to allow a hodgepodge of voting methods all at the same time. Without the board having some control over this, on any particular issue, some owners may insist on participating by internet, others may argue that accommodations must be made for them to participate by telephone, yet others may demand mail ballots, and some may demand to appear in person. It will be impossible to manage a voting by different methods all at the same time. This will undoubtedly lead to conflicts, disputes, and litigation.

I would also note that voting by mail and at a meeting for the same matter is prohibited by Robert’s Rules of Order, Newly Revised. Section 45:56 of Robert’s provides that “[a]n organization should never adopt a bylaw permitting a question to be decided by a voting procedure in which the votes of persons who attend a meeting are counted together with ballots mailed in by absentees.”

I urge the committee to defer this bill, but if it is to be considered for adoption, at the very least, subsection (e) should be revised to state in relevant part:

... Notwithstanding any provision to the contrary in the association's declaration or bylaws or in subsection (b), if authorized by the board of directors in its sole discretion, members of the association or proxies of members [shall be allowed to] may vote by mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology in a manner that allows members the opportunity to: ...

A member of the association or proxy of a member participating in a meeting by means of internet, teleconference, or other electronic transmission technology shall be deemed to be present in person at the meeting. The association shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of the internet, teleconference, or other electronic transmission technology is a member of the association or proxy of a member.

This change will make the provision more consistent with HRS Sections 101(f) and 102(g). Giving the power to select the voting method to the board will also enable the board to ensure an orderly method of voting, consistent with Robert's Rules of Order, Newly Revised.

Respectfully submitted,

Paul A. Ireland Koftinow

SB-2852

Submitted on: 2/14/2022 7:45:29 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
R Laree McGuire	Individual	Comments	No

Comments:

While I support this Bill, I believe much information is needed before remote association meetings become a viable option. I encourage the Committee to form a Task Force to research the various options available to permit voting during a remote meeting as proposed.

Mahalo for the opportunity to testify.

SB-2852

Submitted on: 2/14/2022 8:38:14 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jeff Sadino	Individual	Support	No

Comments:

I SUPPORT this Bill.

If Owners are allowed to submit their proxies by mail, there does not seem to be any compelling reason to prevent an Owner from voting by mail.

Participation in meetings (including voting) should be allowed to be done remotely using the Internet or other similar means. Remote participation has been invaluable for the Legislature over the past two years. This same benefit should be available to Condominium Owners as well, especially with the disperse geographic locations of most Condo Owners.

Thank you for the opportunity to testify,

Jeff Sadino

Dale A. Head

1637 Ala Mahina Place

Honolulu, HI 96819

(808) 836-1016 Home (808) 228-8508 Cell/Text

[dale.head@aol.com] Monday 14 February 2022

Hawaii Senate Committee on Commerce and Consumer Protection:

HB2852 Introducers - KIM, ACASIO, BAKER, CHANG, FEVELLA, INOUE, MISALUCHA, MORIWAKI, RHOADS, Dela Cruz, Gabbard, Ihara, Keith Agaran, Riviere, San Buenaventura, Wakai

Aloha esteemed Senators -

- 1. I asked Senator Donna Mercado Kim and Representative Linda Ichiyama to introduce this Bill.** Having spent **34** years and **10** months in a large condominium complex of 454 units and over a decade on its Board of 'Directors', now I know 'too much' about Home Owners Associations (HOAs). They are formed not by buyers of dwelling units, but by Developers. This means HOA members, the owners, do not write and develop By-Laws. Attorneys paid by the company do that, putting much reliance on state laws which have been heavily influenced by the Developers and commercial management companies via their attorney/lobbyists. There is no 'lobby' for the property owners at our Legislature. They think that by voting in statewide elections their 'civil rights', to include Voting Rights, are being policed and protected. Uh.....
- 2. While our state government takes the position that HOAs are 'self governing' by electing a Board of Directors, from among owners, to represent all members, a 'trick' in the law, specifically **HRS514b-123** specifies that an owner must be "**present at a meeting**" in order to cast their own vote (Note: This occurred via Act 164 from 2005). As a metric, **70%** of HOA properties in Hawaii, and there are over **170,000** condominiums, are owned by 'investors' who do not reside on property. This means, on average, **30%** of owners reside there. Do the simple math here, **70%** of **170,000** dwellings means **119,000** owners, who cannot attend an annual meeting, are shut out of voting. Then too there are mobility challenged people, mostly **Kupuna**, and **disabled people**, who also are **blocked** from making their voices heard. This is not good. How it happened that our own statute was worded in such a way as to assure only a minority of HOA members could vote set the stage for some amazing mischief. For the investors, and they are taxpayers, this is really unfair and deprives them of influencing management of the HOA.**
- 3. While truncating voting rights was a neat trick, and I would like to know who pulled that one off, there is the other matter of Proxies, their misuse and abuse by some companies as a means to manipulate election outcomes. The original Proxy form gave an individual a choice of assigning the right to cast their vote(s) at a meeting, or, that it be used for 'Quorum' purpose only, consenting to a meeting being held but that no vote(s) be cast. But, in **1984**, during the term of **Governor George Ariyoshi**, lobbyists got the state required Proxy form amended for a member to give away their vote to 'the Board'. And, in **1996**, a business lobby group, Community Associations Institute, got lawmakers to amend the form again creating yet another 'option' to give Proxy/Votes to Board members. This was when we had **Governor Benjamin Cayetano**. Surely, neither one of the two Governors were aware of clever predatory gaming of the condo statute, HRS-514b by the lobbyists.**
- 4. As that condo statute is not enforced by the Office of Attorney General, Department of Commerce and Consumers Affairs, or any other state agency, compliance with it is mostly voluntary. The term 'self enforcing' is quite humorous. Reminds me of a comment made decades ago, 'Hey, Dale, you ever see a Stop sign stop a car'? Here is how two intrigues combine to produce an engineered, or, sham election. There is a principle known as an 'Obligation of Goof Faith'. Well, that is appealing, but is only aspirational is it is not enforced.**
- 5. While only a small number of members may actually attend a meeting, say **7%** to **25%**, the investors not living on site, and not knowing personally who is running for election to the Board, think it only fair then to assign their Proxy 'to the Board'. However, the Property Manager does not make an announcement of how many such Proxies came into his possession. They are cloaked in secrecy and even if asked to reveal the number at a meeting, an evasive answer is given, like, merely a percentage. What attendees have no knowledge of is the Manager funneling dozens and hundreds of Proxy/Votes to incumbents to keep them in power. This happens even when other candidates enter the meeting with a higher number of owners Proxies assigned to them. This is how '2nd and 3rd' place finishers are pushed to the 'front of the line' by the Manager. No proper Motion is announced or recorded in**

either the Official Minutes or Election Certificate (signed by Tellers who have no clue). What is the reason for this, surely profits. Those good folks who assigned their Proxy 'to the Board' are never informed of how that document was used for unfair advantage boosting incumbents with low owner support.

6. Absent a state formed Task Force to study this issue, absent regulation of companies issued a business license to handle monies, there is no fear of being held to account for such harmful conduct. The cost is high, which includes hidden fees imposed by the company on sellers and buyers of condominiums which the 'Board' has not agreed to, and has no knowledge of. Also, with a 'friendly' Board resulting from such machinations, huge monthly fees increases happen every year, pressuring some people to move out of the state as they no longer can afford living here. Annual increases should be tied to pension and social security.

7. After performing an elections material review/audit following the **2018** election in my HOA, and discovering how it was hijacked, sent off in December of that year email letters to both the Hawaii Senate and House Committees charged with Consumer Protection. From that later, for the **2019** Legislative Session, Senator Maile S.L. Shimabukuro rounded up **4** other Senators to introduce **SB724**, and Representative Scott Saiki introduced **HB347**. I testified before two House committees and appreciate that the Bill was approved and conveyed to the Senate. But, it was not given a Hearing. For the **2021** Session Senator Lorraine Inouye revived the Proxy matter with **SB61**. It too was not given a Hearing. Meanwhile, over in the House the matter was given the number, **HB221**, introduced by Representative Ryan I. Yamane, but, it was subjected to '*Gut & Replace*' being transformed into something completely different, then voted down. This does not speak well for the 'Legislative Process' or 'the Public Good'. It would be **akamai** to have Legislators defend core values of Democracy.

Hear Their Words

8. On Thursday 3 February 2022, House Committee on Consumer Protection and Commerce held a Hearing for my Bill regarding HOA voting rights. A Parliamentarian suggested allowing owners to vote by Mail and Online would lead to trickery. An attorney parroted that line and amplified it. Amazing!! They have no comment on Property Managers hijacking elections. Use this link to view it (warning - it runs for 2 hours and 7 minutes, but is highly educational to watch 'industry' stakeholders trying to keep Legislators on their side. They do not consider HOA property owners to be 'stakeholders', obviously).

<https://www.youtube.com/watch?v=xleRxG2sl6A>

9. Recently, there has been much negative publicity with scandals at both the City and State level. It does shake public confidence in people we elect to Office. We taxpayers expect honesty and fealty to the Public from those we trust. If Voting Rights matter, why then are most members of HOA properties *blocked* from exercising the right to vote and subjected to amazing intrigues by unregulated, but licensed, management companies?

10. On a side note, in **2019**, on the mainland, a group of attorneys formed 'Lawyers Defending American Democracy'. Great website (**ldad.org**). Voter Suppression is going on nationwide and getting worse.

11. For the reasons cited about, please pass **SB2852**. Over in the House even though they passed Proxy reform in **2019**, it was scuttled in **2021**, and just 'sandbagged' again. So, taxpayers are mere pawns without voting rights. Not one member of that committee asked questions of HOA members present. Most surely I appreciate the current leadership of Senator Donna Mercado Kim & Representative Linda Ichiyama. And, past efforts of Senator Maile S.L. Shimabukuro, Senator Chris Lee, Senator Joy A. Van Buehena, Representative Roy M. Takumi, and Representative Linda Ichiyama.

Respectfully,

Dale A. Head

Please stand up for Voting Rights

Join me in front of our replica Liberty Bell

I plan a once a week visit to the site.



SB-2852

Submitted on: 2/15/2022 3:28:07 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

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

Comments:

Committee on Commerce and Consumer Protection
 Chair Senator Rosalyn Baker and Vice Chair Senator Stanley Chang
 and Committee Members

My name is Lourdes Scheibert and I am a condominium owner. I support SB2852 because it would benefit the condominium owners with direct excess to elect their board members. People are efficient in using the internet for doing business like on-line banking, ordering pizza for fast pick up or delivery, grocery shopping, paying bills, etc. Voting electronically wouldn't be an issue.

The current format for condominium owners to vote is out dated. Today we have the means to change the way condominium owners can vote and eliminate the property management companies. This can be achieved just by copying a successful electronic voting system in use for many years by the City and County of Honolulu Neighborhood Commission Office. A similar format could be used for condominium elections. (See the link <https://www.honolulu.gov/cms-ncnco-menu/site-ncnco-sitarticles/18327-election-faqs.html> for more details.)

Take a look at the Q & A on the City and County Neighborhood Commission website:

When will the Neighborhood Board elections begin and end?

The election is slated to begin April 23, 2021 and end Friday, May 21, 2021.

When will voting passcodes be mailed out?

Passcodes will be mailed out to eligible voters prior to Friday, April 23, 2021. Voters residing in an uncontested race area will not receive a passcode.

Log onto

www2.honolulu.gov/nbe

Online

Voting Ends: 11:59 p.m. on Friday, May 21, 2021.

Online voting locations:

The

following voting sites with computer access will be open during the period of April 26, 2021 through May 21, 2021 from 8:30 a.m. to 4:30 p.m.:

Kapolei Hale Conference Room D, 1000 Ulu'ohi'a Street (Monday through Friday)

Kapalama Hale, 925 Dillingham Boulevard, Suite 160 (Monday through Friday)

Any public library on Oahu within the Hawaii State Public Library System (see library hours)

What if I can't vote online?

If you are unable to vote online, you can request a paper ballot by calling the Ballot Request Hotline at 768-3763 no later than Monday, May 11, 2021, 4:30 p.m. with your full name, nine digit passcode, four digit PIN, and residential address. Returned ballots must be postmarked by Monday, May 21, 2021 and received by the NCO no later than Friday, May 28, 2021.

Thank-you

SB-2852

Submitted on: 2/15/2022 7:01:18 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Marilyn Joyce Oka	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I respectfully OPPOSE S.B. 2852.

In 2021, the legislature amended HRS Section 514B-121 to allow for electronic meetings and electronic, machine, or mail voting during periods of emergencies and when permitted by the declaration or bylaws. That change has worked well. S.B. 2852 will change the statute to allow members or proxies of members to vote my mail and participate in any association meeting by means of the internet, teleconference, or other electronic transmission technology without restriction, so long as the members can view and hear the proceedings, vote on matters submitted to the members of the association, pose questions, and make comments. This change will dictate that these additional methods of voting be allowed in non-emergency situations even if they are not preferred by the membership at large. It is better to leave the decision to the members by permitting them to amend their declaration or bylaws to allow for other methods of voting during non-emergency situations. For this reason, I urge the committee to defer the bill.

Respectfully submitted,

Marilyn Oka

LATE

SB-2852

Submitted on: 2/15/2022 10:52:00 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Crystal Germano	Individual	Support	No

Comments:

Aloha,

I am thankful for the opportunity to write in support of this bill. I have lived in condominium type housing for the majority of my lifetime. Being that this bill makes it easier for condos to adopt smoke free housing policies, it is important that it passes. It is difficult to live in a condo and to inhale second hand smoke or to live next to those who heavily smoke when you do not. My family, children, and animals constantly must live with second hand smoke daily which have negative repercussions on our health. Condos need more smoke free policies in place for the health and safety of the residents and structure of the condo as well. Thank you for considering my testimony.

Mahalo,

Crystal Germano

LATE

SB-2852

Submitted on: 2/15/2022 11:03:39 AM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sunhee Kim Fujii	Individual	Support	No

Comments:

I currently live at the Central Ala Moana with a 7 month old baby and my husband. We are afraid to open our windows and lanai door, because we often smell cigarette smoke when we do. Sometimes, we can even smell cigarette smoke when all our windows/lanai are closed, which really worries me. I think about the effects of secondhand smoke exposure on my young baby, and I cannot wait for the opportunity to support a smoke-free policy for our building. I think the use of technology would definitely make it easier for me and other residents to participate in the voting process. Thank you for your consideration, Sunhee

LATE

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

TESTIMONY IN SUPPORT OF SB 2852, RELATING TO CONDOMINIUMS

My name is Julian Lipsher and I am testifying as an individual in support of SB 2852. I currently serve as Chair of the Coalition For a Tobacco Free Hawaii's Policy Committee, part of the Hawaii Public Health Institute and formerly was with the Hawaii State Department of Health, focusing on tobacco prevention and control and chronic disease.

SB 2852 would require condominium associations to allow members or their proxies to vote by mail and attend and cast votes in association meetings through the internet, teleconference, or other electronic transmission technology.

Despite the gains in protections against the involuntary exposure to tobacco smoke, there remain numerous residents in multi-unit properties that are exposed to secondhand smoke. Buildings where the air conditioning and ventilation designs connect units both adjacent and further away, allow tobacco smoke to easily travel throughout the system.

Current condominium by-laws, where there are no prohibitions against smoking, require changes to be recorded with affirmative votes only with the means to vote is through traditional mail. With today's technology, the availability to cast a vote through such avenues as the internet, video conferencing, or other electronic technology would likely foster increased voter participation.

Efforts to support no smoking policies in multi-unit properties are both popular according to Department of Health surveys and welcomed by owners and residents.

I urge the Committee to adopt this measure that would remove outdated barriers for voting and support the adoption of smoke free policies in multi-unit dwellings.

Thank you for the opportunity to testify.

LATE

SB-2852

Submitted on: 2/15/2022 12:17:08 PM

Testimony for CPN on 2/16/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Katie Folio	Individual	Support	No

Comments:

Aloha Honorable Members of the Committee,

My name is Katie Folio and I coordinated the Maui, Molokai, Lana‘i Coalition for a Tobacco-Free Hawaii for four years, during which time I recieved complaints from across the county from people who live in multiunit housing complexes that were directly impacted by secondhand smoke and had no recourse to help protect themselves and their families. The system in place to adopt smoke-free policies for complexes is very difficult and sometimes impossible since the complex can't get the number of responses necessary, often because many owners live out of state or out of the country. Anything that can be done to help residents move toward smoke-free policies is needed to help protect the health of our multiunit housing communities, which includes residents, visitors, staff, and even pets. The pandemic really demonstrated as we recieved an influx of calls from people stuck inside with secondhand smoke exposure impacting them day and night. This affects quality of life and the health of our keiki. Please pass this bill to make allow condo association members or their proxies to vote by mail and attend and cast votes in association meetings through the internet, teleconference, or other electronic transmission technology. This would make the process much more attainable to go smoke-free.

Mahalo nui loa,

Katie Folio

Kula, Maui, Hawai‘i