

## Testimony of the Real Estate Commission

Before the  
House Committee on Consumer Protection & Commerce  
Tuesday, March 21, 2023  
2:00 p.m.  
Conference Room 329 and Videoconference

On the following measure:  
**S.B. 729, S.D. 1, H.D. 1, RELATING TO BOARD MEMBERS**

Chair Nakashima and Members of the Committee:

My name is Derrick Yamane, and I am the Chairperson of the Hawai'i Real Estate Commission (Commission). The Commission opposes this bill.

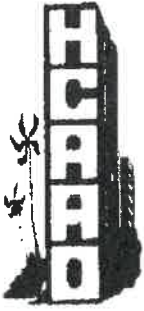
The purposes of this bill are to: (1) authorize the Commission to approve and administer board leadership courses for board members of a condominium association; (2) expand the use of funds in the Condominium Education Trust Fund to include educational requirements for board members; (3) beginning July 1, 2024, require board members of a condominium association to certify the receipt and review of certain documents; and (4) beginning July 1, 2024, require board members of a condominium association with more than fifty units to complete a board leadership course.

The Commission strongly believes that education of condominium board members and unit owners is vital for the efficient operation of associations; however, new regulatory measures require a sunrise review by the Auditor. This bill appears to propose new regulatory controls over board members of condominium associations. Pursuant to Hawaii Revised Statutes (HRS) section 26H-6, all "[n]ew regulatory measures being considered for enactment that, if enacted, would subject unregulated professions and vocations to licensing or **other regulatory controls** shall be referred to the auditor for analysis. Referral shall be by concurrent resolution that identifies a specific legislative bill to be analyzed" (emphasis added). As such, the Commission believes this bill is premature, as it has not undergone the required analysis by the Auditor.

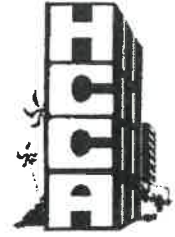
The Commission notes this bill is similar to H.B. 405, H.B. 406, and S.B. 378 introduced during the 2017 legislative session, which proposed to require board members of condominium associations with twenty or more units to complete a board

ethics course. These bills raised concerns that mandatory education may discourage unit owners from volunteering for their board. A sunrise review would provide a cost benefit analysis on the proposed regulations, and identify necessary safeguards to ensure the success of any educational requirements while limiting unintended consequences.

Thank you for the opportunity to testify in opposition on this bill.



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



March 18, 2023

Rep. Mark Nakashima, Chair  
Rep. Jackson Sayama, Vice-Chair  
House Committee on Consumer Protection & Commerce

Re: Testimony in Support of  
SB 729, SD1, HD1 RE Board Members (w/amendments)  
Hearing: Tuesday, March 21, 2023, 2 p.m., Conf. Rm. #329

Chair Nakashima, Vice-Chair Sayama and Members of the Committee:

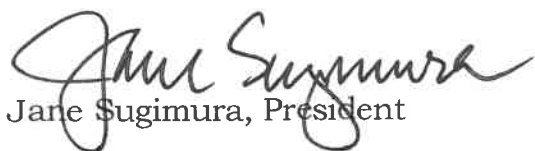
I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCCAO dba HCCA).

HCCA strongly supports the intent and purpose of SB 729 SD1 and believes that requiring condominium board members to acknowledge awareness of their governing documents and to participate in education and training in community association governance would improve their decision-making and governance skills and may minimize disputes by and among owners and their boards.

HCCA suggest the following amendments:

- Incorporate the amendments by Community Associations Institute (“CAI”), i.e., at page 10, line 2, replace the word “reviewed” with “read” so that line 2 reads as follows: “. . . that the member had received and **read** a copy of the . . .”; and at page 10, line 15, insert the word “further” after the word “from” so that line 15 reads as follows: “. . . member from **further** serving on the board . . .”
- Add language to clarify that this bill, if passed, will not have retroactive application.

Thank you for the opportunity to testify on this matter.

  
Jane Sugimura, President

**SB-729-HD-1**

Submitted on: 3/19/2023 11:21:51 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Idor Harris	Honolulu Tower AOA	Oppose	Written Testimony Only

Comments:

Honolulu Tower is a 396 unit condominium built in 1982 located at the corner of Maunakea and N. Beretania Streets. The Honolulu Tower Association of Apartment Owners board of directors (comprised of nine elected volunteer members, none of whom receive compensation) voted unanimously, at its Feb. 6, 2023 meeting, to oppose certain provisions of bills working their way through the legislature.

Included in those provisions are requiring directors to certify in writing compliance with their duties and required training for board members.

The board also believes that if laws create more work, that will increase costs for both the associations and management companies and staff will have to do the work, taking them away from other duties.

Idor Harris  
Resident Manager, Honolulu Tower

**SB-729-HD-1**

Submitted on: 3/20/2023 8:18:20 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Robert Alcorn	Christopher Shea Goodwin AAL, LLLC	Oppose	Written Testimony Only

Comments:

**I OPPOSE S.B. 729, S.D.1, H.D.1 (“S.B.729”).** This measure is intended, in part, to require condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapter 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leadership course completion certificate from a course approved by the real estate commission.”

I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, S.B. 729 will do far more harm than good and lead to a rise in litigation.

S.B. 729 is unnecessary because board members already have a statutory fiduciary duty to their associations. Hawaii Revised Statutes (“HRS”) Section 514B-106 provides that, “In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

HRS Chapter 414D (the Hawaii Nonprofit Corporations Act) Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should generally familiarize themselves with the governing documents and HRS, and attend a seminar on leadership, S.B. 729 will raise numerous problems for condominium associations and property management companies.

First, S.B. 729 contains ambiguous language that is bound to lead to litigation. It is unclear what is meant by the term “reviewed” in the following phrase: “reviewed a copy of the association’s articles of incorporation, bylaws, rules and regulations, and chapter 514B.” The term “review” is not defined in S.B. 729. Black’s Law Dictionary (11th ed 2019), which is frequently cited by the Hawaii Supreme Court, defines “review” as:

“1. Consideration, inspection, or reexamination of a subject or thing. 2. Plenary power to direct and instruct an agent or subordinate, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate.”

If the term “review” in S.B. 729 incorporates any of the foregoing meanings, the statute will make no sense. Although it is not possible to examine every instance of “review” in the HRS, “review” is typically used to refer to boards or commissions reviewing and acting on appeals, applications, requests, and other requests for action. It is not typically used in the context that it is used in S.B. 729. I have not been able to find any instance in which “review” is used in the HRS in the manner in which it is used in S.B. 729. The Legislature should not adopt laws that are unclear and bound to be litigated.

Second, if “review” means “read,” based on the length of HRS Chapter 514B and most governing instruments, each director would have to read at least 200 pages of single-spaced pages of dense legal text, and possibly more. One can only guess how long it will take an average person to read the required documents, as well as declarations of condominium property regimes. For most people, it will probably require two or more full days and given the length of the documents, it will be impossible for the director to retain all that he/she has read.

Third, S.B. 729 will impose major administrative burdens on associations and property management companies because they will need to track and retain board members’ written certificates (and possibly course completion certificates) to ensure compliance and to ensure that the directors continue to be qualified to serve. In practice, this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the

frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards.

Fourth, S.B. 729 imposes unprecedented duties upon board members of associations. To my knowledge, I do not believe HRS imposes legal duties on the members of any state or private commission, board, or committee to “review” the governing documents of the members’ association, organization or agency, or the HRS.

Fifth, under S.B. 729, board members who fail to review the governing documents and HRS Chapter 514B, and attend a board leadership course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations, especially if this applies retroactively. For example, what will happen if years after a board member votes on a measure, it is discovered that a certificate is misplaced or lost? The board member may be deceased. Certificates may be permanently lost. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of the actions taken previously by boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended? How will boards deal with the actions taken by boards years ago when the actions are deemed invalid due to the lack of a quorum? It is possible, if not likely, that S.B. 729 will lead to significant confusion, administrative burdens, and legal disputes.

Sixth, S.B. 729 will discourage many association members from serving on boards. It is already very difficult for many associations to fill positions on boards. Board members are required to dedicate many hours of their time to serve on boards, board members are generally not compensated, board members must deal with the operational and financial challenges of maintaining and operating a multi-million dollar facility, board members are frequently subject to criticism and occasionally harassment by members, and when actions are filed against associations, board members are often named as defendants in litigation. Adding to these challenges, under S.B. 729, any director who fails to sign a written certificate or complete a board leadership course will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability.

S.B. 729 leaves many other questions unanswered.

1. How will the bill apply to directors who are currently serving on boards and who may continue to serve for extended terms because their successors have not been elected for one reason or another?
2. Are the requirements of S.B. 729 triggered only after an election?
3. Will new certificates be required every time a director is elected? If a director serves for a one-year term, will the certificate be required after each election? If a director serves for a three-year term, will the certificate be required every 3 years?
4. Who is responsible for keeping the course certificates? Must associations retain the original or a copy of the course certificate? If so, for how long must certificates be retained?
5. Will directors' qualifications to serve on boards be subject to challenge based on the bill in perpetuity?
6. If a director is deemed disqualified from serving on the board, will the director be deemed automatically removed and the position vacant?
7. If a disqualified director obtains a leadership course completion certificate, or provides a certificate of review, may the director resume serving on the board?
8. Will the bill apply to directors who are appointed to serve on boards but not elected?
9. If a director is disqualified from serving on the board, may the board member run for a position on the board in the future?
10. What happens if a director completes a leadership course within one year of the election, but does not "obtain" a certificate until later, because of delays, inadvertence, reasons beyond the director's control, etc.?

This bill may have good intentions, it has not been drafted with sufficient clarity to serve a useful purpose. Instead, it will prove to be overly burdensome on associations and will lead to confusion and conflicts. Additionally, the administrative burden will add to the cost of operating an association at a time when many associations are struggling to deal with inflation.

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,



Robert Alcorn

Hui 'Oia'i'o

**House of Representatives  
Committee on Consumer Protection & Commerce  
Tuesday, March 21, 2023  
2:00 p.m.**

To: Chair Mark Nakashima  
Re: SB 729, SD 1 HD 1, Relating to Board Members

Aloha Chair Nakashima, Vice-Chair Sayama, and Members of the Committee,

I am Lila Mower, the leader of Hui 'Oia'i'o, a coalition of over three hundred property owners--mostly seniors--from over 150 common-interest associations including condominium associations, planned community associations, and a few cooperative housing corporations throughout Hawaii, and served as an officer on three condominium associations' boards.

On behalf of Hui 'Oia'i'o, I **support SB 729 SD 1 HD 1**.

I am also President of Kokua Council, one of Hawaii's oldest advocacy organizations which submitted proposals to the 2023 Legislature that included provisions regarding the certification of Board Directors to ensure that they have read the governing documents and other documents pertinent to the governance of their associations and are prepared for the managerial, financial, and legal responsibilities necessary to properly govern.

These proposals only reiterated the conclusions of studies prepared by the Legislative Reference Bureau as far back as 1989<sup>1</sup> and the Real Estate Commission in 1991<sup>2</sup> which examined recurring problems with Board Directors' failure to fulfill responsibilities that often resulted in internal strife. These studies are still relevant, referenced as recently as 2020 by Gordon M. Arakaki, Esq., in his work, "The Expert's Guide to Hawaii's Recodified Condominium Law (Chapter 514B, Hawaii Revised Statute)."

The 1989 LRB study concluded:

- "1. The issue of informed condominium association board members and owners pervades a number of other issues and concerns. The presence or absence of knowledge and information on the part of board members and owners necessarily affects all of their actions, decisions, and perspectives, and facilitates [sp] informed decision making...
2. Many board members, owners, and even some managing agents either are unaware of or unfamiliar with the laws, rules, and specific documents governing condominiums. Others do not understand their ramifications or misinterpret their provisions.

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<sup>1</sup> [https://lr.b.hawaii.gov/wp-content/uploads/1989\\_CondominiumGovernance.pdf](https://lr.b.hawaii.gov/wp-content/uploads/1989_CondominiumGovernance.pdf)

<sup>2</sup> Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives – An Issues Paper for the Hawaii Real Estate Commission, by Gregory K. Tanaka (January 1991).

Consequently, many board members and owners do not fully apprehend their respective rights, duties, and responsibilities...As a result, there may be misunderstanding, dissatisfaction, and unfulfilled expectations surrounding condominium living..."

And the LRB made the following recommendation:

"Education of the Condominium Community.

There is a clear, and in many cases a compelling, need to educate members of the condominium community concerning: their respective rights, duties, and obligations; the legal requirements imposed by statute or specific documents governing condominiums; and various other issues including but not limited to good financial management (including planning for major future repairs and replacements), sufficient internal financial controls..."

The continued relevance of these studies suggests that much has not changed despite attempts over the decades to educate owners and directors, conceivably because **there was no enforcement mechanism**. This would be corrected by the enactment of SB 729 SD 1 HD 1.

The recently reported One Archer Lane incident<sup>3</sup> strengthened our resolve to ensure that homeowners are not blindsided by poor decision-making by their governing bodies and by management, occurrences which can be mitigated by better training and education.

Too many of Hawaii's homeowners' associations and their Owners are in financial crisis<sup>4</sup>, which may have been circumvented if Directors were aware of their responsibilities and the potential consequences of failing their duties.

Although many skills are needed to govern successfully, knowledge of their association's governing documents and other pertinent documents is the foundation from which Directors govern responsibly, aware of the expanse and limits of the laws and rules of their association, aware of their duties and confines of power, and aware of the possible consequences of poor governance.

All buildings deteriorate with time and associations must have adequate levels of reserves to mitigate and remediate any structural issues that may occur. Directors must make difficult decisions that may include unappealing but necessary financial choices such as increasing fees that will enable them to keep their associations physically and fiscally sound. To generate trust

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<sup>3</sup> [https://www.kitv.com/news/hundreds-of-condo-owners-at-one-archer-lane-hit-with-up-to-21-000-repair/article\\_20b4fb00-b19d-11ed-b4fa-5f97730dfa25.html](https://www.kitv.com/news/hundreds-of-condo-owners-at-one-archer-lane-hit-with-up-to-21-000-repair/article_20b4fb00-b19d-11ed-b4fa-5f97730dfa25.html)

<sup>4</sup> <https://www.civilbeat.org/2016/05/the-brutal-reality-of-owning-a-condo-in-hawaii/>,  
<https://www.civilbeat.org/2017/01/do-condo-owners-need-some-help-from-hawaiis-legislature/>,  
[http://myassociationsite.com/files/january2017specialedition\\_newsletter\\_263.pdf](http://myassociationsite.com/files/january2017specialedition_newsletter_263.pdf),  
<http://myassociationsite.com/page.jsp?property=yht&page=links>

Hui 'Oia'i'o

and overcome financial conflicts, Directors must be able to help Owners understand their responsibilities.

The proposed certification of Directors can also reduce the burden of condo-related disputes which has the positive consequence of mitigating rising association insurance costs.

States like Florida already require that Board Directors are certified to demonstrate their knowledge of their governing documents and other documents essential to good governance.

In Florida, while there are for-fee classes, there are many **free** classes, too, which are convenient in time and location for Directors:

<https://www.campbellpropertymanagement.com/education/upcoming-events/tag/board-certifications>

<https://www.youtube.com/watch?v=3vTLrIZ-cog>

<https://www.youtube.com/watch?v=ElnVX52gGcE>

<https://www.youtube.com/watch?v=Yq38BcRsMrA>

<https://www.citybiz.co/article/334469/free-virtual-condo-and-hoa-board-certification-course-with-eisinger-law-partners/>

The DCCA should be encouraged to produce such classes without the added expense of a third-party vendor. This belief is supported by the Real Estate Branch's free Condorama series<sup>5</sup> that has been as or more successful in reaching Owners and Directors than the classes conducted by that vendor, presenting the same or similar speakers without the inconvenience of exorbitant costs to Owners and Directors and inconveniently scheduled midweek, midday classes.

Mahalo for the opportunity to testify in support of SB 729, SD 1 HD 1.

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<sup>5</sup> <https://cca.hawaii.gov/reb/files/2022/12/CB2212.pdf>



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

March 19, 2023

Honorable Rep. Mark M. Nakashima, Chair  
Honorable Rep. Jackson D. Sayama, Vice-Chair  
House Committee on Consumer Protection and Commerce (CPC)  
Hawaii State Capitol, Room 329  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Testimony in OPPOSITION including comments regarding SB729 HD1;  
Hearing Date: March 21, 2023 at 2:00 p.m. House conference room 329 and  
Zoom; sent via Internet**

Dear Rep. Nakashima, Chairman; Rep. Sayama, Vice-Chair; Committee Members,

Thank you for the opportunity to provide testimony on this bill. Unfortunately, I'm off island at another meeting and may not be back in time to videoconference to the Committee Meeting.

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 40 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.

We opposed the initial SB729 for numerous reasons. It has since been amended so that several inconsistencies and administrative issues were eliminated. It has also been changed to exempt smaller condominiums from the requirements.

**We are still opposed to the amended bill SB729 HD1. We are concerned that the bill, if enacted, will further erode the pool of volunteers and create administrative issues for the Real Estate Commission, property management companies, and associations.**

The bill will provide an opportunity for attorneys to attempt to reverse board decisions based upon a board member's perceived disqualification outside of a recorded action such as a sale, resignation, minutes of a removal meeting, election, or documented court action.

The bill may also create a profitable training business for attorneys, property managers, and parliamentarians who can put together a course and become involved with the thousands of board members who will require training.

### **Summary of Bill:**

The bill proposes to mandate certification that condominium board members in condominiums with at least 50 units have received and reviewed numerous documents, completed a course of training. It mandates retention of a certificate of completion by the board.

### **Comments:**

The desire to require training is an admirable one. We believe it is well-intentioned. It definitely needs careful consideration before creating it in the form of a new law.

The Hawaii State Association of Parliamentarians, CAI, HCAAO, and the Real Estate Commission present numerous courses for the condominium public. We would challenge all groups supporting this bill to provide similar instruction to the condominium community.

#### **1. Mandatory review requirements**

Page 10, lines 1-5 and pages 10 lines 19-page 11, line 2 specify requirements that a board member must receive and review certain documents. **The bill fails to reference the basic document that creates a condominium property regime.** That document is commonly called a “Declaration” and is defined in HRS §514B-3.

We suggest the inclusion of the “Declaration” in the list.

#### **2. Certification**

Page 10, lines 1-2 and page 10, line 18 require certification in writing to the board. Boards rarely keep all of the association’s records. Secretaries come and go as well as management companies. There is a real risk that the certification will be lost, especially after several years. Therefore, the only logical repository is the Real Estate Commission.

We suggest the following amendment to page 10, lines 1-5:

(g) A board member shall certify in writing ~~[to the board]~~ that the member has received and reviewed a copy of the association’s articles of incorporation, bylaws, rules and regulations, and chapter 514B, within ninety days of election to the board. **The certification shall be filed with the Real Estate Commission.**

Page 10, lines 6-12 require a certification of completion but don't mandate filing of this certification. We suggest a similar amendment to page 10, lines 6-12 through page 11, lines 1-2:

SECTION 4. (a) All board members of a condominium association who are actively serving a term of office on a board before July 1, 2024, shall certify in writing ~~to the board~~ that the member has received and reviewed a copy of the association's articles of incorporation, bylaws, rules and regulations, and chapter 514B within ninety days of election to the board by September 29, 2024. **The certification shall be filed with the Real Estate Commission.**

3. Disqualification penalty

Page 10, lines 13-15 provide that a director who doesn't comply with the requirements shall be disqualified. This is ambiguous. There's no time limit. Is it forever? Is there an immediate vacancy? Is the position suspended?

We propose an amendment that could in the alternative, (a) create a vacancy and (b) provide for a member to become qualified to serve on the board by complying with the necessary requirements.

(i) A board member's failure to comply with the requirements of subsections (g) and (h) shall ~~[disqualify the member from serving on the board.]~~ **create a vacancy on the board and the member shall be disqualified from serving on the board until the member complies with the requirements of subsections (g) and (h).**

**Conclusion:**

We believe that the bill, though well-intentioned, is still somewhat unrealistic and will discourage members from serving on their condominium board. It will also create additional causes of action for plaintiff lawyers against individual directors.

The Senate and at least one House Committee have already approved this bill. If this Committee wishes to approve this bill notwithstanding the community's opposition, we ask that they at least make the amendments enumerated above.

We still OPPOSE the bill and ask that it be deferred. However our respect for your process dictates that we provide positive comments for improvement if this Committee is determined to approve it.

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

Sincerely,

***Steve Glanstein***

Steve Glanstein, Professional Registered Parliamentarian  
Chair, HSAP Legislative Committee



March 20, 2023

VIA WEB TRANSMITTAL

Hearing Date: Tuesday, March 21, 2023

Time: 2:00 p.m.

Place: Conference Room 329

Rep. Mark M. Nakashima, Chair  
Rep. Jackson D. Sayama, Vice Chair  
House Committee on Consumer Protection & Commerce

Re: Hawaii Chapter, Community Associations Institute's  
**Testimony regarding SB 729, SD 1, HD 1**

Dear Chair Hashimoto, Vice Chair Aiu and Committee Members:

I am the Chair of the Legislative Action Committee of the Community Associations Institute, Hawaii Chapter ("CAI-LAC"). We represent the condominium and community association industry and submit this testimony in support with amendments to SB 729, SD 1, HD 1. Specifically, and for the reasons stated herein, we oppose this Bill and ask that it be deferred. However, if it is not deferred, then we seek specific amendments as addressed herein.

This measure is intended, in part, to require condominium association board members to (1) certify that they have received and reviewed the association's governing documents and Chapter 514B of the Hawaii Revised Statutes ("HRS"), and (2) obtain a "board leadership course completion certificate from a course approved by the real estate commission."

We oppose this measure because: 1) it is unnecessary given the existing legal requirements; 2) it will impose unreasonable administrative burdens on condominium associations; 3) it will likely make it more difficult for associations to recruit members to serve on boards; 4) it will complicate the operation of associations; and finally 5) it could indirectly expose board members to personal liability. On balance, S.B. 729, SD 1, HD 1 will do far more harm than good and lead to a rise in litigation.

S.B. 729, SD 1, HD 1 is unnecessary because board members already have a statutory fiduciary duty to their associations. HRS 514B-106 provides that, "In the



performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

HRS Chapter 414D (the Hawaii Nonprofit Corporations Act) Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should generally familiarize themselves with the governing documents, Chapters 414D and 514B of the HRS, and attend a seminar on leadership, S.B. 729, SD 1, HD 1 will raise numerous problems for condominium associations and property management companies.

First, S.B. 729, SD 1, HD 1 contains ambiguous language that is bound to lead to litigation. It is unclear what is meant by the term “reviewed” in the following phrase: “reviewed a copy of the association’s articles of incorporation, bylaws, rules and regulations, and chapter 514B.” The term “review” is not defined in S.B. 729, SD 1, HD 1. Black’s Law Dictionary (11<sup>th</sup> ed 2019), which is frequently cited by the Hawaii Supreme Court, defines “review” as:

1. Consideration, inspection, or reexamination of a subject or thing.
2. Plenary power to direct and instruct an agent or subordinate, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate.

If the term “review” in S.B. 729, SD 1, HD 1 incorporates any of the foregoing meanings, the statute will make no sense. Although it is not possible to examine every instance of “review” in the HRS, “review” is typically used to refer to boards or commissions reviewing and acting on appeals, applications, requests, and other requests for action. It is typically not used in the context that it is used in S.B. 729. We have not been able to find any instance in which “review” is used in the HRS in the manner it is used in S.B. 729. The Legislature should not adopt laws that are unclear and will surely result in litigation.

Second, while the term “read” is preferred, if “review” means “read,” based on the length of HRS Chapter 514B and most governing instruments, each director would have to read at least 200 pages of single-spaced pages of dense legal text, and possibly more. One can only guess how long it will take an average person to read the required

documents, as well as declarations of condominium property regimes. For most people, it will probably require two or more full days and given the length of the documents, it will be impossible for the director to retain all that he/she has read much less comprehend portions of it.

Third, S.B. 729, SD 1, HD 1 will impose major administrative burdens on associations and property management companies because they will need to track and retain board members' written certificates (and possibly course completion certificates) to ensure compliance and to ensure that the directors continue to be qualified to serve. In practice, this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards.

Fourth, S.B. 729, SD 1, HD 1 imposes unprecedented duties upon board members of associations. To the best of our knowledge, we do not believe HRS imposes legal duties on the members of any state or private commissions, boards, or committees to "review" the governing documents of the members' associations, organizations or agencies or the HRS.

Fifth, under S.B. 729, SD 1, HD 1, board members who fail to review the governing documents and HRS Chapter 514B, and attend a board leadership course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations, especially if this applies retroactively. For example, what will happen if years after a board member votes on a measure, it is discovered that a certificate is misplaced or lost? The board member may be deceased. Certificates may be permanently lost. If board members are deemed disqualified from serving on a board, how will S.B. 729, SD 1, HD 1 affect the validity of the actions taken previously by boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended? How will boards deal with the actions taken by boards years ago when the actions are deemed invalid due to the lack of a quorum? It is possible, if not likely, that S.B. 729, SD 1, HD 1 will lead to significant confusion, administrative burdens, and legal disputes. Consequently, at minimum, Section 3(i) of the Bill should be revised to insert the word "further" following the word "from" to address the above concern.

Sixth, S.B. 729, SD 1, HD 1 will discourage many association members from serving on boards. It is already very difficult for many associations to fill positions on boards because board members: 1) are required to dedicate many hours of their time to serve on boards; 2) are generally not compensated; 3) must deal with the operational and financial challenges of maintaining and operating a multi-million dollar facility; 4) are frequently subject to criticism and occasionally harassment by members; and 5) are

often named as defendants in litigation when actions are filed against associations. Adding to these challenges, under S.B. 729, SD 1, HD 1, any director who fails to sign a written certificate or complete a board leadership course will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability.

The foregoing are just a few of the problems raised by this Bill. As such, we urge the committee to permanently defer this bill.

Thank you for your time and consideration.

Sincerely yours,

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

**SB-729-HD-1**

Submitted on: 3/18/2023 5:54:40 PM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jeff Sadino	Individual	Support	Remotely Via Zoom

Comments:

I SUPPORT SB 729 SD1 HD1.

Many people from the trade industry say that this bill is “well intentioned” but they still oppose it. It is amazing how many reasons they can come up with for why Board members should not be educated about their governance duties!

Currently, a large majority of Board members have an adolescent relationship to their responsibilities. They say they are “just volunteers” and think that is a good enough excuse. It is not. Not when they are entrusted with an incredible amount of power and too often, they have used that power to great harm of individual Owners, both on purpose or out of reckless ignorance of their governance duties. This is an objective fact supported by the fact that Hawai’i has a huge, outsized number of lawsuits against Board members for breaching their responsibilities to the AOA than States many, many times our size.

The trade industry proposes that if this Bill passes, then nobody will run for the Board and there will be anarchy. It’s a strange argument that basically says that giving somebody power who will use it incorrectly (as already proven many times in Court!) is better than not giving them that power in the first place.

The trade industry also says that the education already exists. While somewhat true, the problem is that there is no course that provides a methodic, systematic crash-course on how to be a Board member. The current education typically takes a 60-minute deep-dive on just one random topic. As the trade industry says, they are “just volunteers” and I don’t think they have the time, motivation, or incentive to do a bunch of deep-dives on random topics.

If someone does not want to know the rules of the AOA then they have no business being on the Board in the first place and will likely (as already proven many times in Court) cause more harm than good. Yes, they are volunteers, but that does not give them carte blanche to ruin the lives of a condo owner because they are recklessly ignorant of their governance duties (as already proven many times in Court).

Thank you for the opportunity to provide testimony,

Jeff Sadino

**SB-729-HD-1**

Submitted on: 3/20/2023 7:11:39 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Paul A. Ireland Koftinow	Individual	Oppose	Remotely Via Zoom

Comments:

Dear Representative Nakashima, Chair, Representative, Sayama, Vice Chair, and Members of the Committee:

**I OPPOSE S.B. 729, S.D.1, H.D.1 (“S.B.729”).** This measure is intended, in part, to require condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapter 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leadership course completion certificate from a course approved by the real estate commission.”

I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, S.B. 729 will do far more harm than good and lead to a rise in litigation.

S.B. 729 is unnecessary because board members already have a statutory fiduciary duty to their associations. Hawaii Revised Statutes (“HRS”) Section 514B-106 provides that, “In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

HRS Chapter 414D (the Hawaii Nonprofit Corporations Act) Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should generally familiarize themselves with the governing documents and HRS, and attend a seminar on leadership, S.B. 729 will raise numerous problems for condominium associations and property management companies.

First, S.B. 729 contains ambiguous language that is bound to lead to litigation. It is unclear what is meant by the term “reviewed” in the following phrase: “reviewed a copy of the association’s articles of incorporation, bylaws, rules and regulations, and chapter 514B.” The term “review” is not defined in S.B. 729. Black’s Law Dictionary (11th ed 2019), which is frequently cited by the Hawaii Supreme Court, defines “review” as:

“1. Consideration, inspection, or reexamination of a subject or thing. 2. Plenary power to direct and instruct an agent or subordinate, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate.”

If the term “review” in S.B. 729 incorporates any of the foregoing meanings, the statute will make no sense. Although it is not possible to examine every instance of “review” in the HRS, “review” is typically used to refer to boards or commissions reviewing and acting on appeals, applications, requests, and other requests for action. It is not typically used in the context that it is used in S.B. 729. I have not been able to find any instance in which “review” is used in the HRS in the manner in which it is used in S.B. 729. The Legislature should not adopt laws that are unclear and bound to be litigated.

Second, if “review” means “read,” based on the length of HRS Chapter 514B and most governing instruments, each director would have to read at least 200 pages of single-spaced pages of dense legal text, and possibly more. One can only guess how long it will take an average person to read the required documents, as well as declarations of condominium property regimes. For most people, it will probably require two or more full days and given the length of the documents, it will be impossible for the director to retain all that he/she has read.

Third, S.B. 729 will impose major administrative burdens on associations and property management companies because they will need to track and retain board members’ written certificates (and possibly course completion certificates) to ensure compliance and to ensure that the directors continue to be qualified to serve. . In practice, this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards.

Fourth, S.B. 729 imposes unprecedented duties upon board members of associations. To my knowledge, I do not believe HRS imposes legal duties on the members of any state or private commission, board, or committee to “review” the governing documents of the members’ association, organization or agency, or the HRS.

Fifth, under S.B. 729, board members who fail to review the governing documents and HRS Chapter 514B, and attend a board leadership course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations, especially if this applies retroactively. For example, what will happen if years after a board member votes on a measure, it is discovered that a certificate is misplaced or lost? The board member may be deceased. Certificates may be permanently lost. If board members are deemed disqualified from

serving on a board, how will S.B. 729 affect the validity of the actions taken previously by boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended? How will boards deal with the actions taken by boards years ago when the actions are deemed invalid due to the lack of a quorum? It is possible, if not likely, that S.B. 729 will lead to significant confusion, administrative burdens, and legal disputes.

Sixth, S.B. 729 will discourage many association members from serving on boards. It is already very difficult for many associations to fill positions on boards. Board members are required to dedicate many hours of their time to serve on boards, board members are generally not compensated, board members must deal with the operational and financial challenges of maintaining and operating a multi-million dollar facility, board members are frequently subject to criticism and occasionally harassment by members, and when actions are filed against associations, board members are often named as defendants in litigation. Adding to these challenges, under S.B. 729, any director who fails to sign a written certificate or complete a board leadership course will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability.

S.B. 729 leaves many other questions unanswered.

1. How will the bill apply to directors who are currently serving on boards and who may continue to serve for extended terms because their successors have not been elected for one reason or another?
2. Are the requirements of S.B. 729 triggered only after an election?
3. Will new certificates be required every time a director is elected? If a director serves for a one-year term, will the certificate be required after each election? If a director serves for a three-year term, will the certificate be required every 3 years?
4. Who is responsible for keeping the course certificates? Must associations retain the original or a copy of the course certificate? If so, for how long must certificates be retained?
5. Will directors' qualifications to serve on boards be subject to challenge based on the bill in perpetuity?
6. If a director is deemed disqualified from serving on the board, will the director be deemed automatically removed and the position vacant?
7. If a disqualified director obtains a leadership course completion certificate, or provides a certificate of review, may the director resume serving on the board?
8. Will the bill apply to directors who are appointed to serve on boards but not elected?
9. If a director is disqualified from serving on the board, may the board member run for a position on the board in the future?



10. What happens if a director completes a leadership course within one year of the election, but does not “obtain” a certificate until later, because of delays, inadvertence, reasons beyond the director’s control, etc.?

While this bill may have good intentions, it has not been drafted with sufficient clarity to serve a useful purpose. Instead, it will prove to be overly burdensome on associations and will lead to confusion and conflicts. Additionally, the administrative burden will add to the cost of operating an association at a time when many associations are struggling to deal with inflation.

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Paul A. Ireland Koftinow

## Testimony In Support of SB729 HD1 HSCR1302

**Submitted for:** Consumer Protection & Commerce Committee Hearing, scheduled to be heard on Tuesday, 3/21/23 at 2:00 PM.

Aloha Chair Nakashima, Vice Chair, Sayama, and Members of the Committee,

**SB729 HD1 HSCR1302 will provide much needed Board of Directors training and certification** and will eliminate the “excuses” often made by Directors when they improperly conduct Association business, “that they are just volunteers.” A seat on any Board of Directors must be filled by qualified candidates, and the “volunteer” excuse was and is unacceptable. The results can clearly be seen in the many mismanaged Associations throughout Hawaii. All Board Members need to be required to complete mandatory training and certification, so they know what is expected of them and their fiduciary duty.

My personal experience at my Association has confirmed what every legislator should know, that there are many unqualified Directors on the Board, and this is negatively impacting my Association. This is repeated across Associations throughout Hawaii, and I have heard this from many concerned condominium owners. The result is abuse of power and malfeasance, and the solution begins with SB729 HD1 HSCR1302, followed by an Ombudsman’s Office to oversee condominiums and HOAs.

Directors on Association Boards need to know their responsibilities and duties, and read and understand HRS 514B, other applicable Statutes, and their Governing Documents. Abuse of their positions also needs to result in oversight and enforcement by the Hawaii Attorney General’s Office, until an Ombudsman is in place.

It is also very concerning to continue to see testimony opposing this measure and others meant to provide better consumer protections, from the same group who profits when there is more conflict at Associations. This group includes Attorneys, Parliamentarians, and Management Companies. Decision making should always consider motive.

I ask the Committee and all State Legislators to please support SB729 HD1 HSCR1302.

And I ask you to support and act on HB178 and HB1501 in the 2024 Legislative Session, which will provide for an Ombudsman’s Office to oversee and resolve the many valid complaints and concerns homeowners have with their Boards and Management Companies, due to mismanagement and malfeasance.

Mahalo,  
Greg Misakian

2<sup>nd</sup> Vice President, Kokua Council  
Board Member, Waikiki Neighborhood Board

**SB-729-HD-1**

Submitted on: 3/20/2023 1:55:00 PM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Rachel Glanstein	AOAO Lakeview Sands	Oppose	Written Testimony Only

Comments:

Aloha,

Thank you for the opportunity to provide testimony on this bill. This testimony is provided in opposition to SB729 HD1. Please defer or hold this bill.

I am a professional registered parliamentarian and I am often engaged to chair association meetings, and sometimes even board meetings. Although there are a few association elections with more candidates than seats, I've found that most associations have uncontested elections.

I also serve as secretary for my own condo board. My board should have five members, but we have had two vacancies for a few years now because people don't want to serve. The problem is not that there are too many candidates for board service – it's that there are too few.

Any legislation that makes it more difficult to serve in an unpaid volunteer position on an association board is not a good idea. This bill could also expose board members to personal liability. If this bill passes, I foresee a mass exodus of board members. Board members already owe a fiduciary duty to their association, and they don't need more responsibilities heaped upon them. The changes proposed in this bill are not necessary.

I do feel that board members should be familiar with the governing documents and the local laws, but they are volunteers, and a vocal minority of owners shouldn't make near impossible requirements for board member service. Those vocal minorities could work to amend their own governing documents to require this of their own boards rather than putting this onus on everyone.

This bill could make it increasingly difficult for owners with jobs or other obligations to serve on boards – is the goal to limit board service to the independently wealthy or the retired?

Please defer SB729 HD1.

Mahalo,

Rachel M. Glanstein

**SB-729-HD-1**

Submitted on: 3/17/2023 3:53:47 PM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Andrew Crossland	Individual	Support	Written Testimony Only

Comments:

I support this Bill.

# LAW OFFICES OF PHILIP S. NERNEY, LLLC

A LIMITED LIABILITY LAW COMPANY  
335 MERCHANT STREET, #1534, HONOLULU, HAWAII 96806  
PHONE: 808 537-1777

March 17, 2023

Chair Mark M. Nakashima  
Vice Chair Jackson D. Sayama  
Committee on Consumer Protection & Commerce  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **SB 729 SD1 HD1 SUPPORT WITH AMENDMENTS**

Dear Chair Nakashima, Vice Chair Sayama and Committee Members:

Please pass SB 729 SD1 HD1 with amendments.<sup>1</sup> Specifically:

- 1) Please remove the words "and reviewed" from Section 3 (HRS §514B-106(g)); and
- 2) Substitute the following language in Section 3 (HRS §514B-106(g)):

(i) A board member's failure to comply with the requirements of subsections (g) and (h) shall disqualify the member from ~~servicing~~ [further service] on the board."

The reason for these requests is to avoid unintended consequences.

The words "and reviewed" could easily become fodder for fact questions about the sufficiency of required "review." Significant board actions might come become mired in controversy as a result, to the harm and detriment of innocent consumers who, as owners, are financially responsible for payment of association common expenses.

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<sup>1</sup> "(g) A board member shall certify in writing to the board that the member has received ~~and reviewed~~ a copy of the association's articles of incorporation, bylaws, rules and regulations, and chapter 514B, within ninety days of election to the board.

(h) A board member of a registered condominium project or association with more than fifty units shall obtain a board leadership course completion certificate from a course approved by the real estate commission, within one year of election to the board; provided that the completion of a board leadership course shall be optional for board members of a registered condominium project or association with fifty units or less.

(i) A board member's failure to comply with the requirements of subsections (g) and (h) shall disqualify the member from ~~servicing~~ [further service] on the board."

Chair Mark M. Nakashima  
Vice Chair Jackson D. Sayama  
March 17, 2023  
Page 2 of 2

Certification of "receipt" of relevant documents is certification of an *objective* fact. It suffices to make the intended point.

Certification of "review" is certification of something *subjective* and *ambiguous*. The value of including "and review" is limited, and the potential harm of including those words is significant.

Boards often seek legal advice regarding the meaning of documents. The statute should not raise the specter that "review" by a board member would imply any particular level of understanding.

Similarly, clarifying that a board member who does not timely complete a prescribed course shall not *continue* in service beyond a deadline is important to avoid the unintended consequence of bringing into question acts performed by the board member prior to the deadline.<sup>2</sup> Allowing acts prior to the deadline to be questioned would be harmful to the consumers who are financially responsible for liability incurred by an association.

Stated differently, it is enough to create further assurances of faithful board service by imposing the stated certification requirements. Doing so should not, however, create potential liability that could harm innocent consumers.

It may also be appropriate to delay the effective date of the bill to enable the real estate commission to approve a board leadership course.

Very truly yours,

*/s/ Philip Nerney*

Philip S. Nerney

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<sup>2</sup> The Committee may wish to consider whether a lifetime ban is intended. If not, then the Committee may wish to consider an amendment like:

(i) A board member's failure to comply with the requirements of subsections (g) and (h) shall disqualify the member from ~~serving~~ [further service] on the board[; provided that the board member may be re-elected to the board by the owners, subject to the certification requirements of this section.]

A lifetime ban may be too harsh, and a person may be able to comply with applicable requirements at a later time.

**SB-729-HD-1**

Submitted on: 3/17/2023 6:18:58 PM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

Please support this important bill. Mahalo.

**SB-729-HD-1**

Submitted on: 3/17/2023 8:54:07 PM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Richard Emery	Individual	Support	Written Testimony Only

Comments:

I support SB729 SD1 HD1 on;y with the amendments proposed by Phil Nerney, although i believe the Bill is unnecessary. Without Nerney's amendments the Bill will expose associations to unnecessary litigation.



**SB-729-HD-1**

Submitted on: 3/18/2023 11:54:39 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Renate Alarcon	Individual	Support	Written Testimony Only

Comments:

Please make to read in SB729 that this requires ALL members, boards of directors and officers of the Condominium Association, etc

ALL condominiums face the same issues, regardless of their size. By implementing bylaws, house rules, and other measures, all condos can ensure that board members are held accountable. It is particularly important to hold smaller condos accountable, as they can become a "free for all." Therefore, there should be no difference in the size of condos included in educational requirements. All condos would benefit from the same level of education, regardless of size. While larger boards may have more experience, smaller boards are the ones that really need these requirements. It is unclear why the size of the condo should suddenly change the educational requirements. Money for education should not be an issue, as education brings wisdom and knowledge, which ultimately leads to more effective and cost-efficient management.

Thank you for your time and consideration by including all condos.

Very Respectfully,

Renate

**SB-729-HD-1**

Submitted on: 3/18/2023 5:57:38 PM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Anne Anderson	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Nakashima, Chair, Representative, Sayama, Vice Chair, and Members of the Committee:

**I OPPOSE S.B. 729, S.D.1, H.D.1 (“S.B.729”).** This measure is intended, in part, to require condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapter 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leadership course completion certificate from a course approved by the real estate commission.”

I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, S.B. 729 will do far more harm than good and lead to a rise in litigation.

S.B. 729 is unnecessary because board members already have a statutory fiduciary duty to their associations. Hawaii Revised Statutes (“HRS”) Section 514B-106 provides that, “In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

HRS Chapter 414D (the Hawaii Nonprofit Corporations Act) Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should generally familiarize themselves with the governing documents and HRS, and attend a seminar on leadership, S.B. 729 will raise numerous problems for condominium associations and property management companies.

First, S.B. 729 contains ambiguous language that is bound to lead to litigation. It is unclear what is meant by the term “reviewed” in the following phrase: “reviewed a copy of the association’s articles of incorporation, bylaws, rules and regulations, and chapter 514B.” The term “review” is not defined in S.B. 729. Black’s Law Dictionary (11th ed 2019), which is frequently cited by the Hawaii Supreme Court, defines “review” as:

“1. Consideration, inspection, or reexamination of a subject or thing. 2. Plenary power to direct and instruct an agent or subordinate, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate.”

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Second, if “review” means “read,” based on the length of HRS Chapter 514B and most governing instruments, each director would have to read at least 200 pages of single-spaced pages of dense legal text, and possibly more. One can only guess how long it will take an average person to read the required documents, as well as declarations of condominium property regimes. For most people, it will probably require two or more full days and given the length of the documents, it will be impossible for the director to retain all that he/she has read.

Third, S.B. 729 will impose major administrative burdens on associations and property management companies because they will need to track and retain board members’ written certificates (and possibly course completion certificates) to ensure compliance and to ensure that the directors continue to be qualified to serve. . In practice, this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards.

Fourth, S.B. 729 imposes unprecedented duties upon board members of associations. To my knowledge, I do not believe HRS imposes legal duties on the members of any state or private commission, board, or committee to “review” the governing documents of the members’ association, organization or agency, or the HRS.

Fifth, under S.B. 729, board members who fail to review the governing documents and HRS Chapter 514B, and attend a board leadership course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations, especially if this applies retroactively. For example, what will happen if years after a board member votes on a measure, it is discovered that a certificate is misplaced or lost? The board member may be deceased. Certificates may be permanently lost. If board members are deemed disqualified from

serving on a board, how will S.B. 729 affect the validity of the actions taken previously by boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended? How will boards deal with the actions taken by boards years ago when the actions are deemed invalid due to the lack of a quorum? It is possible, if not likely, that S.B. 729 will lead to significant confusion, administrative burdens, and legal disputes.

Sixth, S.B. 729 will discourage many association members from serving on boards. It is already very difficult for many associations to fill positions on boards. Board members are required to dedicate many hours of their time to serve on boards, board members are generally not compensated, board members must deal with the operational and financial challenges of maintaining and operating a multi-million dollar facility, board members are frequently subject to criticism and occasionally harassment by members, and when actions are filed against associations, board members are often named as defendants in litigation. Adding to these challenges, under S.B. 729, any director who fails to sign a written certificate or complete a board leadership course will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability.

S.B. 729 leaves many other questions unanswered.

1. How will the bill apply to directors who are currently serving on boards and who may continue to serve for extended terms because their successors have not been elected for one reason or another?
2. Are the requirements of S.B. 729 triggered only after an election?
3. Will new certificates be required every time a director is elected? If a director serves for a one-year term, will the certificate be required after each election? If a director serves for a three-year term, will the certificate be required every 3 years?
4. Who is responsible for keeping the course certificates? Must associations retain the original or a copy of the course certificate? If so, for how long must certificates be retained?
5. Will directors' qualifications to serve on boards be subject to challenge based on the bill in perpetuity?
6. If a director is deemed disqualified from serving on the board, will the director be deemed automatically removed and the position vacant?
7. If a disqualified director obtains a leadership course completion certificate, or provides a certificate of review, may the director resume serving on the board?
8. Will the bill apply to directors who are appointed to serve on boards but not elected?
9. If a director is disqualified from serving on the board, may the board member run for a position on the board in the future?

10. What happens if a director completes a leadership course within one year of the election, but does not “obtain” a certificate until later, because of delays, inadvertence, reasons beyond the director’s control, etc.?

This bill may have good intentions, it has not been drafted with sufficient clarity to serve a useful purpose. Instead, it will prove to be overly burdensome on associations and will lead to confusion and conflicts. Additionally, the administrative burden will add to the cost of operating an association at a time when many associations are struggling to deal with inflation.

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Anne Anderson

**SB-729-HD-1**

Submitted on: 3/18/2023 6:20:52 PM

Testimony for CPC on 3/21/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
mary freeman	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Nakashima, Chair, Representative, Sayama, Vice Chair, and Members of the Committee:

**I OPPOSE S.B. 729, S.D.1, H.D.1 (“S.B.729”).** This measure is intended, in part, to require condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapter 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leadership course completion certificate from a course approved by the real estate commission.”

I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, S.B. 729 will do far more harm than good and lead to a rise in litigation.

S.B. 729 is unnecessary because board members already have a statutory fiduciary duty to their associations. Hawaii Revised Statutes (“HRS”) Section 514B-106 provides that, “In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

S.B. 729 leaves many other questions unanswered.

1. How will the bill apply to directors who are currently serving on boards and who may continue to serve for extended terms because their successors have not been elected for one reason or another?
2. Are the requirements of S.B. 729 triggered only after an election?
3. Will new certificates be required every time a director is elected? If a director serves for a one-year term, will the certificate be required after each election? If a director serves for a three-year term, will the certificate be required every 3 years?
4. Who is responsible for keeping the course certificates? Must associations retain the original or a copy of the course certificate? If so, for how long must certificates be retained?
5. Will directors' qualifications to serve on boards be subject to challenge based on the bill in perpetuity?
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While this bill may have good intentions, it has not been drafted with sufficient clarity to serve a useful purpose. Instead, it will prove to be overly burdensome on associations and will lead to confusion and conflicts. Additionally, the administrative burden will add to the cost of operating an association at a time when many associations are struggling to deal with inflation.

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Mary Freeman

Ewa Beach



**SB-729-HD-1**

Submitted on: 3/18/2023 7:49:35 PM

Testimony for CPC on 3/21/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
George Vozikis	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Nakashima, Chair, Representative, Sayama, Vice Chair, and Members of the Committee:

**I OPPOSE S.B. 729, S.D.1, H.D.1 (“S.B.729”).** This measure is intended, in part, to require condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapter 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leadership course completion certificate from a course approved by the real estate commission.”

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HRS Chapter 414D (the Hawaii Nonprofit Corporations Act) Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should generally familiarize themselves with the governing documents and HRS, and attend a seminar on leadership, S.B. 729 will raise numerous problems for condominium associations and property management companies.

Respectfully,

Dr. George Vozikis

**SB-729-HD-1**

Submitted on: 3/19/2023 6:40:43 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Lance S. Fujisaki	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Nakashima, Chair, Representative Sayama, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 729, S.D.1, H.D.1 ("S.B.729"). This measure is intended, in part, to require condominium association board members to (1) certify that they have received and reviewed the association's governing documents and Chapter 514B of the Hawaii Revised Statutes ("HRS"), and (2) obtain a "board leadership course completion certificate from a course approved by the real estate commission."

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HRS Chapter 414D (the Hawaii Nonprofit Corporations Act) Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should generally familiarize themselves with the governing documents and HRS, and attend a seminar on leadership, S.B. 729 will raise numerous problems for condominium associations and property management companies.

First, S.B. 729 contains ambiguous language that is bound to lead to litigation. It is unclear what is meant by the term "reviewed" in the following phrase: "reviewed a copy of the association's articles of incorporation, bylaws, rules and regulations, and chapter 514B." The term "review" is not defined in S.B. 729. Black's Law Dictionary (11th ed 2019), which is frequently cited by the Hawaii Supreme Court, defines "review" as:

"1. Consideration, inspection, or reexamination of a subject or thing. 2. Plenary power to direct and instruct an agent or subordinate, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate."

If the term "review" in S.B. 729 incorporates any of the foregoing meanings, the statute will make no sense. Although it is not possible to examine every instance of "review" in the HRS, "review" is typically used to refer to boards or commissions reviewing and acting on appeals, applications, requests, and other requests for action. It is not typically used in the context that it is used in S.B. 729. I have not been able to find any instance in which "review" is used in the HRS in the manner in which it is used in S.B. 729. The Legislature should not adopt laws that are unclear and bound to be litigated.

Second, if "review" means "read," based on the length of HRS Chapter 514B and most governing instruments, each director would have to read at least 200 pages of single-spaced pages of dense legal text, and possibly more. One can only guess how long it will take an average person to read the required documents, as well as declarations of condominium property regimes. For most people, it will probably require two or more full days and given the length of the documents, it will be impossible for the director to retain all that he/she has read.

Third, S.B. 729 will impose major administrative burdens on associations and property management companies because they will need to track and retain board members' written certificates (and possibly course completion certificates) to ensure compliance and to ensure that the directors continue to be qualified to serve. In practice, this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards.

Fourth, S.B. 729 imposes unprecedented duties upon board members of associations. To my knowledge, I do not believe HRS imposes legal duties on the members of any state or private commission, board, or committee to "review" the governing documents of the members' association, organization or agency, or the HRS.

Fifth, under S.B. 729, board members who fail to review the governing documents and HRS Chapter 514B, and attend a board leadership course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations, especially if this applies retroactively. For example, what will happen if years after a board member votes on a measure, it is discovered that a certificate is misplaced or lost? The board member may be deceased. Certificates may be permanently lost. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of the actions taken previously by

boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended? How will boards deal with the actions taken by boards years ago when the actions are deemed invalid due to the lack of a quorum? It is possible, if not likely, that S.B. 729 will lead to significant confusion, administrative burdens, and legal disputes.

Sixth, S.B. 729 will discourage many association members from serving on boards. It is already very difficult for many associations to fill positions on boards. Board members are required to dedicate many hours of their time to serve on boards, board members are generally not compensated, board members must deal with the operational and financial challenges of maintaining and operating a multi-million dollar facility, board members are frequently subject to criticism and occasionally harassment by members, and when actions are filed against associations, board members are often named as defendants in litigation. Adding to these challenges, under S.B. 729, any director who fails to sign a written certificate or complete a board leadership course will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability.

S.B. 729 leaves many other questions unanswered.

1. How will the bill apply to directors who are currently serving on boards and who may continue to serve for extended terms because their successors have not been elected for one reason or another?
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10. What happens if a director completes a leadership course within one year of the election, but does not "obtain" a certificate until later, because of delays, inadvertence, reasons beyond the director's control, etc.?

While this bill may have good intentions, it has not been drafted with sufficient clarity to serve a useful purpose. Instead, it will prove to be overly burdensome on associations and will lead to confusion and conflicts. Additionally, the administrative burden will add to the cost of operating an association at a time when many associations are struggling to deal with inflation.

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Lance Fujisaki

**SB-729-HD-1**

Submitted on: 3/19/2023 11:26:43 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carol Walker	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Nakashima, Chair, Representative, Sayama, Vice Chair, and Members of the Committee:

**I OPPOSE S.B. 729, S.D.1, H.D.1 (“S.B.729”).** This measure is intended, in part, to require condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapter 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leadership course completion certificate from a course approved by the real estate commission.”

I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, S.B. 729 will do far more harm than good and lead to a rise in litigation.

S.B. 729 is unnecessary because board members already have a statutory fiduciary duty to their associations. Hawaii Revised Statutes (“HRS”) Section 514B-106 provides that, “In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

HRS Chapter 414D (the Hawaii Nonprofit Corporations Act) Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a

manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should generally familiarize themselves with the governing documents and HRS, and attend a seminar on leadership, S.B. 729 will raise numerous problems for condominium associations and property management companies.

I have served on my board for 8 years. I can tell you that we spend incredible amounts of time working for our community. To ask this of board members is unreasonable. We are generally familiar with our underlying documents, and if we have questions, we consult them or ask our attorney for an interpretation. This bill, as written, is asking too much of unpaid volunteers. We know we have a fiduciary responsibility to our owners and we do what we need to do to fulfill that obligation.

Carol Walker



**SB-729-HD-1**

Submitted on: 3/19/2023 11:40:01 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Oppose	Written Testimony Only

Comments:

Please accept this as testimony in strong opposition to a bill that was introduced by request and those affected do not know who that person/entity is.

I live in a high rise condominium on the outskirts of Honolulu's Chinatown. All owners, including board members, have access to the governing documents. If you want to make this a requirement, something that is covered in other bills, I suggest you require it of all owners, so when they come to complain, file lawsuits, etc. they will have acknowledged that they fully understand their rights and duties and will comply. The association is considered deep pockets by the owners. Owners have asked boards to reimburse them for expenses incurred because of leaks, etc. that were caused by another owner's inattention, including air conditioner leaks that are not association property but that of the individual owners.

You should also realize that people will sign anything if it makes their lives easier. Or, perjure themselves at a grand jury which some members of a Georgia grand jury dealing with tampering in the 2020 election have alleged.

In addition, it is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burdens on condominium associations. It will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, it will increase maintenance fees as the costs incurred will be passed on to the owners, who are already complaining about required expenses, and it could indirectly expose board members to personal liability.

S.B. 729 will impose major administrative burdens on associations and property management companies because they will need to track and retain board members' written certificates (and possibly course completion certificates) to ensure compliance and to ensure that the directors continue to be qualified to serve. In practice, this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards.

S.B. 729 imposes unprecedented duties upon board members of associations. Does HRS impose legal duties on the members of any state or private commission, board, or committee to "review"

the governing documents of the members' association, organization or agency, or the HRS. Does HRS or rules of the legislative chambers require legislators to "review" HRS?

The owners select the board members. Are you willing to nullify the will of the owners?

Please defer this bill permanently, or at least until the June 30, 3000 effective date when it will be moot as the state will probably be underwater due to climate change and Lo'ihl isn't expected to surface for another 14,000 or so years.

**SB-729-HD-1**

Submitted on: 3/20/2023 10:01:08 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dawn Smith	Individual	Support	Written Testimony Only

Comments:

I support any legislation that makes condominium board members more cognizant of and responsible for their fiduciary responsibilities. I also support any legislation that limits the ability of management companies (i.e.monopolies) to railroad their own interests over those of the condominium owners. Therefore I support SB729.

**SB-729-HD-1**

Submitted on: 3/20/2023 9:18:48 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Laurie Sokach	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Nakashima, Chair, Representative, Sayama, Vice Chair, and Members of the Committee:

**I OPPOSE S.B. 729, S.D.1, H.D.1 (“S.B.729”).** This measure is intended, in part, to require condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapter 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leadership course completion certificate from a course approved by the real estate commission.”

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Although ordinarily prudent persons serving on an association board should generally familiarize themselves with the governing documents and HRS, and attend a seminar on leadership, S.B. 729 will raise numerous problems for condominium associations and property management companies.

First, S.B. 729 contains ambiguous language that is bound to lead to litigation. It is unclear what is meant by the term “reviewed” in the following phrase: “reviewed a copy of the association’s articles of incorporation, bylaws, rules and regulations, and chapter 514B.” The term “review” is not defined in S.B. 729. Black’s Law Dictionary (11th ed 2019), which is frequently cited by the Hawaii Supreme Court, defines “review” as:

“1. Consideration, inspection, or reexamination of a subject or thing. 2. Plenary power to direct and instruct an agent or subordinate, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate.”

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Second, if “review” means “read,” based on the length of HRS Chapter 514B and most governing instruments, each director would have to read at least 200 pages of single-spaced pages of dense legal text, and possibly more. One can only guess how long it will take an average person to read the required documents, as well as declarations of condominium property regimes. For most people, it will probably require two or more full days and given the length of the documents, it will be impossible for the director to retain all that he/she has read.

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Fifth, under S.B. 729, board members who fail to review the governing documents and HRS Chapter 514B, and attend a board leadership course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations, especially if this applies retroactively. For example, what will happen if years after a board member votes on a measure, it is discovered that a certificate is misplaced or lost? The board member may be deceased. Certificates may be permanently lost. If board members are deemed disqualified from

serving on a board, how will S.B. 729 affect the validity of the actions taken previously by boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended? How will boards deal with the actions taken by boards years ago when the actions are deemed invalid due to the lack of a quorum? It is possible, if not likely, that S.B. 729 will lead to significant confusion, administrative burdens, and legal disputes.

Sixth, S.B. 729 will discourage many association members from serving on boards. It is already very difficult for many associations to fill positions on boards. Board members are required to dedicate many hours of their time to serve on boards, board members are generally not compensated, board members must deal with the operational and financial challenges of maintaining and operating a multi-million dollar facility, board members are frequently subject to criticism and occasionally harassment by members, and when actions are filed against associations, board members are often named as defendants in litigation. Adding to these challenges, under S.B. 729, any director who fails to sign a written certificate or complete a board leadership course will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability.

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For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Laurie Sokach, AMS, PCAM

Association Management Specialist

Professional Community Association Manager

**Aloha CPC Chair Mark M. Nakashima, Vice Chair Jackson D. Sayama, and Members Terez Amato, Della Au Belatti, Cedric Asuega Gates, Mark J. Hashem, Natalia Hussein-Burdick, Nicole E. Lowen, Richard H.K. Onishi, Adrian Tam, and Elijah Pierick**

**1.** This is a worthy 'consumer friendly' Bill which is long overdue, by decades. As you may be aware, an estimated **40%** of Hawaii population now reside in **HOA** (Home Owners Association) properties, while about **19** years ago that figure was **20%**. Presently **70%** of all new housing is within HOA complexes, meaning that in just a few more years more than **50%** of Hawaii residents will be in them.

**2.** Although our state government insists HOAs are 'self-governing', and while it does issue business licenses to property management companies, the state fails to exercise common sense by allowing those companies to both handle monies and 'elections' for Boards of Directors. This is a clear conflict of interest.

**3.** I resided in a large **454** unit condominium complex for nearly **35** years and volunteered my time to be on its Board of Directors for over a **decade**. During that time I attended many Seminars, for which the state contracted with **CAI** (Community Associations Institute). Their guest speakers were often attorneys who specialize in collections, insurance sales people, and some building contractor speakers. Also, I attended several state sponsored **Condorama** presentations. Something which really 'stood out' for me was observing there never is any mention of election integrity.

**4.** After a few years of seemingly suspicious election intrigues perpetrated by some of the management companies, I took the time to audit proxies on a post election basis to see how they were assigned by owners who could not attend an **Annual Meeting**. I confirmed how chicanery is perpetrated. Bear in mind that absentee owners are denied receiving a **Ballot** and are instead mailed a **Proxy** form. It has been cleverly tooled by **Lobbyist** to include prominently displayed boxes to assign their proxy to the Board. While they can mark that proxy for 'quorum' purposes only, or, assign it to an individual to exercise their **vote**, those two choices are listed below giving it to



the **Board**. Guess what happens next.

**5.** The assigned Property Manager for the HOA client, who is not licensed by the state of Hawaii, receives **all of the proxies**. They are aggregated and kept confidential. Candidates for election to the Board are provided, when they enter the meeting, with a list of names of owners who assigned them their proxy. However, no announcement is made at the meeting as to how many proxies were assigned to the Board, and, even if asked for the metrics of that during the meeting, the number is remains 'secret'. What attendees are deprived of seeing is how the Manager confers 'Board Proxies' to candidates, most often an inner circle of incumbents (thereby keeping them in power), and by doing so determining the election outcome. Humor - Quite amazingly Lobbyists from the 'industry' of management companies got this matter of 'conditional' voting (that an HOA member must be present at a meeting in order to cast their own vote) into state law as **HRS514b-123** back in **2005** while we had **Governor Linda Lingle**. Any person with average intelligence can see this is profits driven. "Keep the contract'!!

**6.** For several years now I have 'networked' with several people who reside in other condominium complexes on Oahu. We have a commonality of this problem, which is perpetuated by state unwillingness to **prohibit** vendors from both handling HOA monies and also their elections.

**7.** Property owners of HOA dwelling units are not getting meaningful consumer protection from the state in this area, and that must change. Bills introduced to provide due process and voting rights within HOAs are always vehemently opposed by the companies lobbyists, staff employees, and of course lawyers. As HOA specific statutes are not enforced by the state, that ever growing slice of the population needs representation in our Legislature. [There is no Legislative Action Committee for HOA Voting Rights]

**8.** I propose inclusion of advocates for due process and voting rights on any Task Force or Working Group set up to accomplish to goals of **SB719 HD1**. Lobbyist for the companies like to use the term 'Stakeholders' for themselves. Well, their 'Stake' is maintains the current status quo which is often anti-consumer and anti-voting rights. So much for democracy.

Sincerely, **Dale Arthur Head**

[dale.head@aol.com]

3/20/2023

PS - Just one paragraph in 90+ pages which are voluntary, outside of a Court Room

**HR514b-106**

In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.

**SB-729-HD-1**

Submitted on: 3/20/2023 10:44:56 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Marcia Kimura	Individual	Support	Written Testimony Only

Comments:

I fully support this measure.

## Richard A. Chiodini

75-6081 Ali'i Drive Unit BB 103 Kailua-Kona, HI 96740  
Tel: 808 339 5360 e-mail: [rachiodini@gmail.com](mailto:rachiodini@gmail.com)

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March 20, 2023

Dear Representative Nakashima, Chair, Representative, Sayama, Vice Chair, and Members of the Committee:

**I OPPOSE S.B. 729, S.D.1, H.D.1 (“S.B.729”).** This measure is intended, in part, to require condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapter 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leadership course completion certificate from a course approved by the real estate commission.”

I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, S.B. 729 will do far more harm than good and lead to a rise in litigation.

S.B. 729 is unnecessary because board members already have a statutory fiduciary duty to their associations. Hawaii Revised Statutes (“HRS”) Section 514B-106 provides that, “In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

HRS Chapter 414D (the Hawaii Nonprofit Corporations Act) Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should generally familiarize themselves with the governing documents and HRS, and attend a seminar on leadership, S.B. 729 will raise numerous problems for condominium associations and property management companies.

First, S.B. 729 contains ambiguous language that is bound to lead to litigation. It is unclear what is meant by the term “reviewed” in the following phrase: “reviewed a copy of the association’s articles of incorporation, bylaws, rules and regulations, and chapter 514B.” The term “review” is not defined in S.B. 729. Black’s Law Dictionary (11<sup>th</sup> ed 2019), which is frequently cited by the Hawaii Supreme Court, defines “review” as:

“1. Consideration, inspection, or reexamination of a subject or thing. 2. Plenary power to direct and instruct an agent or subordinate, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate.”

If the term “review” in S.B. 729 incorporates any of the foregoing meanings, the statute will make no sense. Although it is not possible to examine every instance of “review” in the HRS, “review” is typically used to refer to boards or commissions reviewing and acting on appeals, applications, requests, and other requests for action. It is not typically used in the context that it is used in S.B. 729. I have not been able to find any instance in which “review” is used in the HRS in the manner in which it is used in S.B. 729. The Legislature should not adopt laws that are unclear and bound to be litigated.

Second, if “review” means “read,” based on the length of HRS Chapter 514B and most governing instruments, each director would have to read at least 200 pages of single-spaced pages of dense legal text, and possibly more. One can only guess how long it will take an average person to read the required documents, as well as declarations of condominium property regimes. For most people, it will probably require two or more full days and given the length of the documents, it will be impossible for the director to retain all that he/she has read.

Third, S.B. 729 will impose major administrative burdens on associations and property management companies because they will need to track and retain board members’ written certificates (and possibly course completion certificates) to ensure compliance and to ensure that the directors continue to be qualified to serve. . In practice, this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards.

Fourth, S.B. 729 imposes unprecedented duties upon board members of associations. To my knowledge, I do not believe HRS imposes legal duties on the members of any state or private commission, board, or committee to “review” the governing documents of the members’ association, organization or agency, or the HRS.

Fifth, under S.B. 729, board members who fail to review the governing documents and HRS Chapter 514B, and attend a board leadership course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations, especially if this applies retroactively. For example, what will happen if years after a board member votes on a measure, it is discovered that a certificate is misplaced or lost? The board member may be deceased. Certificates may be permanently lost. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of the actions taken previously by boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended? How will boards deal with the actions taken by boards years ago when the actions are deemed invalid due to the lack of a quorum? It is possible, if not likely, that S.B. 729 will lead to significant confusion, administrative burdens, and legal disputes.

Sixth, S.B. 729 will discourage many association members from serving on boards. It is already very difficult for many associations to fill positions on boards. Board members are required to dedicate many hours of their time to serve on boards, board members are generally not compensated, board members must deal with the operational and financial challenges of maintaining and operating a multi-million dollar facility, board members are frequently subject to criticism and occasionally harassment by members, and when actions are filed against associations, board members are often named as defendants in litigation. Adding to these

challenges, under S.B. 729, any director who fails to sign a written certificate or complete a board leadership course will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability.

S.B. 729 leaves many other questions unanswered.

1. How will the bill apply to directors who are currently serving on boards and who may continue to serve for extended terms because their successors have not been elected for one reason or another?
2. Are the requirements of S.B. 729 triggered only after an election?
3. Will new certificates be required every time a director is elected? If a director serves for a one-year term, will the certificate be required after each election? If a director serves for a three-year term, will the certificate be required every 3 years?
4. Who is responsible for keeping the course certificates? Must associations retain the original or a copy of the course certificate? If so, for how long must certificates be retained?
5. Will directors' qualifications to serve on boards be subject to challenge based on the bill in perpetuity?
6. If a director is deemed disqualified from serving on the board, will the director be deemed automatically removed and the position vacant?
7. If a disqualified director obtains a leadership course completion certificate, or provides a certificate of review, may the director resume serving on the board?
8. Will the bill apply to directors who are appointed to serve on boards but not elected?
9. If a director is disqualified from serving on the board, may the board member run for a position on the board in the future?
10. What happens if a director completes a leadership course within one year of the election, but does not "obtain" a certificate until later, because of delays, inadvertence, reasons beyond the director's control, etc.?

While this bill may have good intentions, it has not been drafted with sufficient clarity to serve a useful purpose. Instead, it will prove to be overly burdensome on associations and will lead to confusion and conflicts. Additionally, the administrative burden will add to the cost of operating an association at a time when many associations are struggling to deal with inflation.

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Richard Chiodini  
President, Ali'i Lani Condominiums  
75-6081 Ali'i Drive  
Kailua-Kona, HI 96740

**SB-729-HD-1**

Submitted on: 3/20/2023 10:48:05 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lourdes Scheibert	Individual	Support	Written Testimony Only

Comments:

HOUSE OF REPRESENTATIVES THE THIRTY-SECOND LEGISLATURE REGULAR SESSION OF 2023 COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TO: CHAIR MARK M NAKASHIMA, VICE CHAIR JACKSON D SAYAMA AND COMMITTEE MEMBERS

Date: Tuesday, March 21, 2023 TIME: 2:00PM PLACE VIA VIDEOCONFERENCE

In Support SB 729,SD1, HD1, (HSCR1302) Relating to Board Members.

I am Lourdes Scheibert, participant of Hui 'Oia' i'o, a coalition of over three hundred property owners-mostly seniors & member of Kokua Council. I am a senior.

HCCA, Jane Sugimura and CAI LAC Hawaii R. Laree McGuire also supported SB 729, SD1. Both organizations are the primary educators for the condominium board members, owners and their management agents.

Please pass this measure so the Real Estate Commission can implement the safety codes inclusive to 514B and education.

In recent years and today, many Condominium Associations are borrowing money in millions of dollars and assessing the owners. This is to cover the short fall of the Reserve Fund that have been underfunded for decades. Maintenance and Repair for the buildings infrastructure is due today.

Education in the safety codes should be implemented as soon as possible. Awareness of these safety codes will support management of the Association calling to attention that **condominium self-governance has limitations**. Board members and their managing agents should be educated on the safety codes to properly prepare Reserve Studies so all owners pay their fair share.

My condominium Declaration dated 11/13/1968 reads: b. Observance of laws. Keep all common elements in a strictly clean and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the common elements or the use thereof;

## **CITY AND COUNTY DPP SAFETY CODES International Building Code Section 3401**

**International Building Code 3401.1 Scope.** The provisions of this chapter shall control the alteration, repair, addition and change of occupancy of existing structures. Exception: Existing bleachers, grandstands and folding and telescopic seating shall comply with ICC 300-02.

**International Building Code 3401.2 Maintenance.** Buildings and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices or safeguards which are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's designated agent shall be responsible for the maintenance of buildings and structures. To determine compliance with this subsection, the building official shall have the authority to require a building or structure to be reinspected. The requirements of this chapter shall not provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures.

**International Building Code 3401.3 Compliance with other codes.** Alterations, repairs, additions and changes of occupancy to existing structures shall comply with the provisions for alterations, repairs, additions and changes of occupancy in the International Fire Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Property Maintenance Code, International Private Sewage Disposal Code, International Residential Code and ICC Electrical Code. These are relevant excerpts

**1990 Legislative Reference Bureau study:** "The Bureau makes the following findings and conclusions:

1. The issue of informed condominium association board members and owners pervades a number of other issues and concerns. The presence or absence of knowledge and information on the part of board members and owners necessarily affects all of their actions, decisions, and perspectives and facilitates informed decision-making.. .
2. Many board members, owners, and even some managing agents either are unaware of or unfamiliar with the laws, rules, and specific documents governing condominiums. Others do not understand their ramifications or misinterpret their provisions. Consequently, many board members and owners do not fully apprehend their respective rights, duties, and responsibilities...As a result, there may be misunderstanding, dissatisfaction, and unfulfilled expectations surrounding condominium living... The Bureau makes the following recommendations: 1. Education o f t h e Condominium Community There is a clear, and in many cases a compelling, need to educate members of the condominium community concerning: their respective rights, duties, and obligations; the legal requirements imposed by statute or specific documents governing condominiums; a n d various other issues including but not limited to good financial management (including planning for major future repairs and replacements), sufficient internal financial controls..." Attempts over the decades to educate Owners and Directors have not been successful as there was no enforcement mechanism. This would be corrected by the enactment of SB 729 SD1 HD1

Thank you, Lourdes Scheibert





**SB-729-HD-1**

Submitted on: 3/20/2023 12:01:19 PM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Diann Karin Lynn	Individual	Support	Written Testimony Only

Comments:

This bill is really *really* important to help us condo owners help our Boards be educated! Sometimes it takes a nudge to help / remind people to "do the right thing." PLEASE vote for this bill.

**SB-729-HD-1**

Submitted on: 3/20/2023 12:04:57 PM

Testimony for CPC on 3/21/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jeff Marsh	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Nakashima, Chair, Representative, Sayama, Vice Chair, and Members of the Committee:

**I OPPOSE S.B. 729, S.D.1, H.D.1 (“S.B.729”).** This measure is intended, in part, to require condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapter 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leadership course completion certificate from a course approved by the real estate commission.”

I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, S.B. 729 will do far more harm than good and lead to a rise in litigation.

S.B. 729 is unnecessary because board members already have a statutory fiduciary duty to their associations. Hawaii Revised Statutes (“HRS”) Section 514B-106 provides that, “In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

HRS Chapter 414D (the Hawaii Nonprofit Corporations Act) Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation.

These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should generally familiarize themselves with the governing documents and HRS, and attend a seminar on leadership, S.B. 729 will raise numerous problems for condominium associations and property management companies.

First, S.B. 729 contains ambiguous language that is bound to lead to litigation. It is unclear what is meant by the term “reviewed” in the following phrase: “reviewed a copy of the association’s articles of incorporation, bylaws, rules and regulations, and chapter 514B.” The term “review” is not defined in S.B. 729. Black’s Law Dictionary (11th ed 2019), which is frequently cited by the Hawaii Supreme Court, defines “review” as:

“1. Consideration, inspection, or reexamination of a subject or thing. 2. Plenary power to direct and instruct an agent or subordinate, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate.”

If the term “review” in S.B. 729 incorporates any of the foregoing meanings, the statute will make no sense. Although it is not possible to examine every instance of “review” in the HRS, “review” is typically used to refer to boards or commissions reviewing and acting on appeals, applications, requests, and other requests for action. It is not typically used in the context that it is used in S.B. 729. I have not been able to find any instance in which “review” is used in the HRS in the manner in which it is used in S.B. 729. The Legislature should not adopt laws that are unclear and bound to be litigated.

Second, if “review” means “read,” based on the length of HRS Chapter 514B and most governing instruments, each director would have to read at least 200 pages of single-spaced pages of dense legal text, and possibly more. One can only guess how long it will take an average person to read the required documents, as well as declarations of condominium property regimes. For most people, it will probably require two or more full days and given the length of the documents, it will be impossible for the director to retain all that he/she has read.

Third, S.B. 729 will impose major administrative burdens on associations and property management companies because they will need to track and retain board members’ written certificates (and possibly course completion certificates) to ensure compliance and to ensure that

the directors continue to be qualified to serve. . In practice, this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards.

Fourth, S.B. 729 imposes unprecedented duties upon board members of associations. To my knowledge, I do not believe HRS imposes legal duties on the members of any state or private commission, board, or committee to “review” the governing documents of the members’ association, organization or agency, or the HRS.

Fifth, under S.B. 729, board members who fail to review the governing documents and HRS Chapter 514B, and attend a board leadership course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations, especially if this applies retroactively. For example, what will happen if years after a board member votes on a measure, it is discovered that a certificate is misplaced or lost? The board member may be deceased. Certificates may be permanently lost. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of the actions taken previously by boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended? How will boards deal with the actions taken by boards years ago when the actions are deemed invalid due to the lack of a quorum? It is possible, if not likely, that S.B. 729 will lead to significant confusion, administrative burdens, and legal disputes.

Sixth, S.B. 729 will discourage many association members from serving on boards. It is already very difficult for many associations to fill positions on boards. Board members are required to dedicate many hours of their time to serve on boards, board members are generally not compensated, board members must deal with the operational and financial challenges of maintaining and operating a multi-million dollar facility, board members are frequently subject to criticism and occasionally harassment by members, and when actions are filed against associations, board members are often named as defendants in litigation. Adding to these challenges, under S.B. 729, any director who fails to sign a written certificate or complete a board leadership course will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability.

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Jeff MARsh

Site Manager

The PAalms at Wailea AOA

Dear Senator Jarrett, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee

I **OPPOSE S.B. 729** as it requires incorporated planned community association and condominium association board members to certify that they have received and read the corporation's governing documents, or obtain a leader course completion certificate because it is unnecessary given the existing legal requirements,

Board members already have a statutory fiduciary duty to their associations. Section 514B-106 of the Hawaii Revised Statutes ("HRS") provides that directors owe the association a fiduciary duty and must exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.

The Hawaii Nonprofit Corporations Act imposes duties upon directors and officers to discharge their duties in good faith, with a duty of loyalty to the association, with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the director or officer reasonably believes to be in the best interests of the corporation.

S.B. 729 will impose major administrative burdens on incorporated homeowner associations and property management companies. Imposing legal requirements for this type of record keeping will be extremely burdensome because of the frequent changes in the persons serving on boards, the changes in property management firms and/or the frequent changes in property managers assigned to specific associations and the number of persons serving on boards.

If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of actions taken by boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended?

S.B. 729 will discourage many association members from serving on boards. Any director will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. Also, SB. 729 does not specify details on the requirements of "board leader courses," and there are no procedures for issuing instructor certifications.

This bill will be overly burdensome on associations and will lead to confusion and conflicts. The administrative burden will add to the cost of operating an association.

I urge the committee to permanently defer this bill.

Sincerely,

/s/ Pamela J. Schell



**GORDON M. ARAKAKI**

Attorney at Law, LLLC  
94-1176 Polinahe Place  
Waipahu, Hawaii 96797  
Cell: (808) 542-1542  
E-mail: gordonarakaki@hawaiiantel.net

March 20, 2023

Hearing Date: Tuesday, March 21, 2023

Time: 2:00 PM

Place: Conference Room 329

The Honorable Mark M. Nakashima, Chair  
The Honorable Jackson D. Sayama, Vice Chair  
House Committee on Consumer Protection and Commerce

Re: Comments on SB 729, SD1, HD1 – Relating to Board Members  
(Written Testimony Only)

Aloha, Chair Nakashima, Vice Chair Sayama, and Members of the House Committee on Consumer Protection and Commerce:

I am Gordon M. Arakaki, providing written comments as an individual regarding HB 729, SD1 HD1, which would:

- Require members of boards of directors of condominium associations to certify the receipt and reading of certain documents or be disqualified from serving on the board; and
- Require members of boards of directors of condominium associations to complete a “board leadership” course approved by the Real Estate Commission or be disqualified from serving on the board.

The purpose of these new requirements and penalties is purportedly to improve the decision-making and governance skills of boards of directors of condominium associations, and potentially minimize disputes between board members and unit owners by making sure that board members receive proper education and training. These are laudable goals. It is critical, though, to put programs and people in the best position to succeed at achieving such goals, and I question whether this bill does that.

Against that backdrop, the Legislature should also keep in mind that many condominium associations struggle to get people to serve on their boards. As with most issues before the Legislature, legitimate but competing interests are at the heart of this matter.

By way of background, from December 2000 through June 2004, I served as the Hawaii Real Estate Commission’s Condominium Law Recodification Project Attorney. During my time as the Recodification Project Attorney, I worked with lawmakers, the Commission, a blue ribbon advisory committee, and stakeholders throughout the State to “update, clarify, organize,



deregulate, and provide for consistency and ease of use” of Hawaii’s then 44+ year old condominium law. I am the author of the Commission’s final report to the Legislature on the recodification of Hawaii’s condominium property regimes law,<sup>1</sup> which the Legislature stated should be used as an aid in understanding and interpreting the new law (HRS Chapter 514B).<sup>2</sup> For my work with the condominium community in “helping craft and advance the next generation of the Hawaii Condominium Property Act,” I received the Community Associations Institute—Hawaii Chapter’s 2004 “Public Advocate Award.” Since that time (with a two-year break spent serving as Chief of Staff/Committee Clerk of the Senate Ways and Means Committee), I have worked as a private attorney specializing in, among a few other things, condominium law and government affairs.

I have the following comments and concerns regarding SB 729, SD1, HD1:

1. Improving the decision-making and governance skills of boards of directors of condominium associations is important, but it is questionable whether this bill’s requirements and penalties will achieve this.

The education and training requirements coupled with penalties and no incentives as set forth in this bill do not give it the best chance to succeed at improving the decision-making and governance skills of boards of directors of condominium associations or potentially minimize disputes between board members and unit owners.

a. Simply requiring board members to certify in writing that they have “received and reviewed a copy of the association’s articles of incorporation, bylaws, rules and regulations,”<sup>3</sup> and HRS Chapter 514B will not help improve board members’ decision-making and governance skills. Indeed, the requirement might unnecessarily create more real world problems than it solves.

The governing documents of condominiums (i.e., a condominium’s master deed, declaration, bylaws, condominium map, and oftentimes its house rules and articles of incorporation) are complex and usually not easily understood. To complicate matters, condominium development attorneys have traditionally (but unnecessarily) regurgitated statutory language in their declarations and bylaws. As HRS Chapter 514B is amended (and HRS Chapter 514A and its predecessors were amended), the now obsolete regurgitated statutory language remains in the condominium’s governing documents unless those documents are restated or amended. For these and many other reasons, even attorneys and judges sometimes have difficulty understanding and interpreting a

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<sup>1</sup> “Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes), in response to Act 213, Section 4 (SLH 2000)”, by the Hawaii Real Estate Commission, dated December 31, 2003 (“Commission’s 2003 Final Report”).

<sup>2</sup> Pursuant to Act 164 [Session Laws of Hawaii (“SLH”) 2004], the Hawaii Real Estate Commission’s 2003 Final Report should be used as an aid in understanding and interpreting the new condominium law (HRS Chapter 514B).

<sup>3</sup> Please note that the bill fails to include the condominium’s master deed, declaration, and condominium map in its list of what I presume is supposed to be the project’s governing documents.

condominium’s governing documents correctly.<sup>4</sup> Having volunteer board members certify receipt and review of a condominium’s governing documents would appear to do little except open up another area for potential liability and a disincentive to serve.

b. The education provisions of this bill certainly might help improve condominium board members’ decision-making and governance skills. HCR 99/HR 106 and SCR 124/SR 130 (“Urging the Real Estate Commission to develop policies and programs to inform and educate condominium owners and board members of certain matters to promote the efficient administration of condominium associations”) make sense in this context. That being said, it would behoove the Legislature to take the time (and give stakeholders and the Real Estate Commission the time) to do this right.

I’ve seen decent ideas for programs get passed by the Legislature only to fail because proponents were too impatient to take the time necessary to scope ideas, set things up properly, and give their programs the best chance to succeed.

In this case, while I understand the desire of the bill’s proponents to mandate education requirements for condominium board members or be disqualified from serving (because so many board members have not voluntarily taken the excellent seminars put on by the Real Estate Commission, CAI-Hawaii Chapter, and HCAAO), it is difficult to see how “all stick, no carrots” would work for volunteers.

Incentives should be developed for condominium board members who take the “board leadership” classes contemplated by this bill. For example (and just thinking out loud), perhaps it would be possible for condominium associations whose board members have taken appropriate “board leadership” classes to get discounts on insurance (D&O or even property & casualty)—particularly if the association has had claims that have caused their insurance premiums to skyrocket. Although this particular suggestion might require a national—as opposed to state—effort, because Hawaii’s insurance market is so small, I think that it is necessary to have some “carrots” for condominium board members who take “board leadership” classes.

Bottom line: The question is not whether to help improve condominium board decision-making and governance, but how.

2. SB 729, HD1 is a substantial improvement over SB 729, SD1.

By: (i) deleting provisions related to planned community associations and cooperatives (governed by HRS Chapters 421J and 421I, respectively), which would have been practically and possibly legally premature; and (ii) establishing a more reasonable yet still ambitious timeline, HD1 substantially improved SB 729.

HD1’s delayed effective date gives this bill the best chance to succeed at meeting its goals. As recommended in the Real Estate Commission’s 2003 “Final Report to the Legislature,

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<sup>4</sup> The mistakes made by Hawaii’s appellate courts in a series of cases involving nonjudicial foreclosure by condominium associations appear to have been a substantial factor in the rising costs and lack of availability of D&O insurance for condominium associations.

Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes), in response to Act 213, Section 4 (SLH 2000)” (at page 36):

[T]he recodified Hawaii condominium law should have a [one year] delayed effective date. The vast majority of the public does not pay close attention to potential legislation until it is adopted. Considering the scope of the recodified Hawaii condominium law and the number of people, businesses, and agencies affected by the law, it makes sense to have a delayed effective date to give people (many of whom will not have followed the proposed legislation) a chance to become educated about the new law. It will also be possible to consider recommendations received during this educational period and to fine-tune the law in the next legislative session.

3. Not for this bill (its title will not allow it), but the condominium community needs to figure out how to educate condominium unit owners about the rights and responsibilities of condominium ownership.

As once noted by a Florida court, which was favorably quoted in the Real Estate Commission’s 2003 Final Report on the recodification of Hawaii’s condominium law:

[I]nherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners ... each unit owner must give up a certain degree of freedom of choice which [the unit owner] might otherwise enjoy in separate, privately owned property.<sup>5</sup>

To improve the decision-making and governance skills of boards of directors of condominium associations and potentially minimize disputes between board members and unit owners, both condominium board members and condominium unit owners must understand their respective rights and responsibilities under the condominium form of real property ownership. Developing educational classes for this and getting more condominium board members and unit owners to actually take such classes is a worthy goal.

#### **IV. Conclusion.**

Thank you for your time and consideration of my comments regarding SB 729, SD1, HD1.

Sincerely,

Gordon M. Arakaki

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<sup>5</sup> Hidden Harbour Estates, Inc. v. Norman, 309 So.2d 180, 181-182 (Fla. Dist. Ct. App. 1975); Commission’s 2003 Final Report at page 9.

**SB-729-HD-1**

Submitted on: 3/20/2023 3:49:09 PM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kate Paine	Individual	Support	Written Testimony Only

Comments:

Need bills that promote transparency to owners

**SB-729-HD-1**

Submitted on: 3/21/2023 7:45:51 AM

Testimony for CPC on 3/21/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Philip Rosenberg	Individual	Support	Written Testimony Only

Comments:

I support SB 729 because it is incumbent on board members to be educated on all laws governing their performance as board members. Knowledge is instrumental in understanding your responsibilities as a board member. The extra level of education will prevent those owners who run for the board of directors whose only purpose is to support an agenda that does not comport with HRS 514B, the house rules, bylaws and management agreement. This bill will provide an extra level of knowledge in understanding their due diligence and fiduciary responsibility.