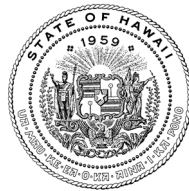


JOSH GREEN, M.D.
GOVERNOR



LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
Ka 'Oihana Mālama Mo'ohelu a Kālā
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON HOUSING
ON
SENATE BILL NO. 729, S.D. 1

March 15, 2023
9:00 a.m.
Room 312 and Videoconference

RELATING TO BOARD MEMBERS

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill (S.B.) No. 729, S.D. 1, amends Chapters 421I and 421J, HRS, to:

- 1) require the Real Estate Commission (REC) to establish the Cooperative Housing Corporation (CHC) Education Trust Fund (CHCETF) and the Planned Community Association (PCA) Education Trust Fund (PCAETF) for various educational purposes;
- 2) require certain projects, CHCs and PCAs to pay CHCETF and PCAETF fees to the Department of Commerce and Consumer Affairs (DCCA), subject to various provisions;
- 3) grant DCCA and REC various powers to collect and adjust fees, expend funds from the CHCETF and PCAETF for staffing, not subject to Chapter 76, and other expenses, and invest funds from the CHCETF and PCAETF with funds from the Real Estate Education Fund (REEF) in the same manner as funds from the Employees' Retirement System (ERS);
- 4) establish reporting requirements to the Legislature;
- 5) require each project, CHC, and PCA having more than five units to register with REC; and
- 6) establish various other provisions pertaining to the CHCETF and PCAETF. The bill

also amends Chapters 421I, 421J, 467, and 514B, to add various provisions regarding members elected to the boards of directors for CHCs and PCAs.

Pursuant to Section 37-62, HRS, a trust fund is defined as “a fund in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.” With respect to S.B. No. 729, S.D. 1, it is unclear if the proposed CHCETF and PCAETF meet the definition of a trust fund and if these funds would more appropriately be classified as special funds. Finally, B&F notes DCCA may not have the capacity to manage and invest funds from the CHCETF and PCAETF together with funds from the REEF “in the same manner as are funds of the ERS of the State.”

Thank you for your consideration of our comments.

Testimony of the Real Estate Commission

**Before the
House Committee on Housing
Wednesday, March 15, 2023
9:00 a.m.**

Conference Room 312 and Videoconference

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

Chair Hashimoto 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.

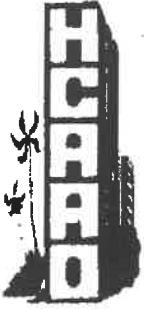
The purposes of this bill are to: (1) establish the Cooperative Housing Corporation Education Trust Fund and the Planned Community Association Education Trust Fund; (2) require Cooperative Housing Corporations and Planned Community Associations to register with the Department of Commerce and Consumer Affairs; (3) require members of boards of directors and officers of condominium associations, cooperative housing corporations, and planned community associations to certify the receipt and review of certain documents and complete a board leader course approved by the Commission; (4) authorize the Commission to use funds from the Condominium Education Trust Fund, Cooperative Housing Corporation Education Trust Fund, and Planned Community Associations Education Trust Fund to finance the provision of board leader courses; and (5) establish that a board member's failure to certify the receipt and review of certain documents and complete a board leader course approved by the Commission shall be grounds for disqualification from the board of directors.

New regulatory measures require a sunrise review by the Auditor. This bill appears to propose new regulatory measures, as this bill would regulate new classes of currently unregulated entities: cooperative housing corporations and planned community associations. In addition, this bill appears to propose new regulatory controls over: (1) members of the board of directors of associations of unit owners, cooperative housing corporations, and planned community associations; and (2) developers of cooperative housing corporations and planned community associations. The Commission believes this bill is premature, as it has not undergone the required

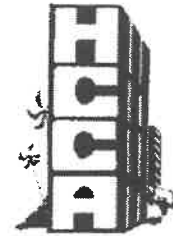
analysis by the Auditor, pursuant to Hawaii Revised Statutes (HRS) section 26H-6, which requires that all “[n]ew regulatory measures being considered for enactment that, if enacted, would subject unregulated professions and vocations to licensing or **other regulatory controls** shall be referred to the auditor for analysis. Referral shall be by concurrent resolution that identifies a specific legislative bill to be analyzed” (emphasis added).

The proposed measure would require significant resources to implement, and additional areas of registration would adversely impact the Commission’s limited resources as well as its priorities and program of work. While the bill creates two new sources of revenue to fund the proposed regulations, it is currently unknown how many cooperative housing corporations or planned community associations are in existence and what types of issues arise from them. A sunrise analysis would help identify the number of entities potentially within the scope of this legislation, the form of regulation, evidence of abuses that would support regulation, and the cost of oversight.

Thank you for the opportunity to testify in opposition on this bill. The Commission respectfully requests that this measure be held in Committee.



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



March 13, 2023

Rep. Troy Hashimoto, Chair
Rep. Micah Aiu, Vice-Chair
House Committee on Housing

Re: Testimony in Support of
SB 729, SD1 RE Board Members (w/amendments)
Hearing: Wednesday, March 15, 2023, 9 a.m., Conf. Rm. #312

Chair Hashimoto, Vice-Chair Aiu 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 receipt and review 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:

- Sections One through Five of the SD1 should be stricken because HB1509 HD2, which has crossed over is also pending in the Senate deals with giving DCCA oversight of co-operative housing corporations and planned community associations. The task force that is contemplated by that bill to consider whether condos, co-ops and planned community associations should be governed by one law for common -interest developments can in the alternative recommend DCCA oversight for co-ops and planned community associations to establish a registration/trust fund to support subsidized dispute resolution and board training/educational requirements.

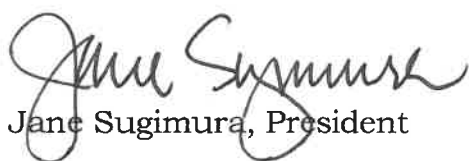
- Hawaii Condominium Sizes – 2023 (From DCCA)

# of Total Units	# of Associations
Greater than 500 Units	26
151-500 Units	265
51-150 Units	712
50 Units or Less	1,070

Exclude condos with 50 units or less from the board training and education requirement, or make it voluntary for those smaller condos. 51% of Hawaii’s condominiums are small with widely different management issues than larger condominiums. Legislative mandates for all condominiums can impose difficult and expensive obligations for smaller association

- The training/education curriculum should be developed under the direction of the Real Estate Commission after first obtaining input from stakeholders as to what should be included in the curriculum. Requiring all current and future condo board members to attend training/educational classes to obtain certification is impracticable and will likely discourage volunteers from serving on their boards because they would have to take time from their busy schedules to attend classes. Instead, I suggest that the Real Estate Commission engage a professional to create videos that can be viewed on-line to obtain certification as an alternative to attending classes for training.
- Since board training may likely result in reduction of condo disputes, the Real Estate Commission should be allowed to use condo-education funds to implement the educational program as to condo boards.
- Make the effective date of this bill July 1, 2024 or even January 1, 2025, to allow time for the Real Estate Commission to hold public hearings, develop the curriculum and create the videos for the online training/education for certification.

Thank you for the opportunity to testify on this matter.


Jane Sugimura, President

SB-729-SD-1

Submitted on: 3/12/2023 12:05:11 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
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 waythrough 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

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

March 13, 2023

VIA WEB TRANSMITTAL

Hearing Date: Wednesday, March 15, 2023

Time: 9:00 a.m.

Place: Conference Room 312

Rep. Troy Hashimoto, Chair
Rep. Micah Aiu, Vice Chair
House Committee on Housing

Re: Hawaii Chapter, Community Associations Institute's
Testimony in support with amendments to SB 729, SD 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. Specifically, and for the reasons well-stated therein, we adopt the testimony submitted today by Jane Sugimura on behalf of HCCA.

. Thank you for your time and consideration.

Sincerely yours,

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

SB-729-SD-1

Submitted on: 3/13/2023 8:47:25 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Steve Glanstein	Hawaii State Association of Parliamentarians	Oppose	Written Testimony Only

Comments:

The bill begins by establishing an "education trust fund" which imposes a tax on cooperatives and community associations. (Condominium associations are already taxed). It purports to be for education. It leaves the taxable amount up to the Real Estate Commission (REC) for cooperatives. It ignores the reality that there are very few cooperatives and they're not registered with the REC. Developers are building communities in Planned Community Associations, condominiums, NOT cooperatives.

That didn't stop the tax of \$3 times the number of units until the Real Estate Commission makes rules (page 4, lines 3-12).

The same process is provided with Planned Community Associations (PCA). A PCA such as Mililani Town Association with 8,934 households will be hit up for \$3/unit until the REC makes rules (page 14, lines 1-3). they don't even have records of PCAs. This tax totals \$26,802 per year until the rules are implemented and it drops to \$13,401 per year.

Other testifiers are providing information about various ambiguous and unmanagement parts of this bill. History is repeating itself with proposed legislation that is contrary to the best interests of the community. Although the parliamentary, property management, and legal field may gain financially by providing mandatory education, there is a correct way to do it. The bill will accomplish the opposite and should be deferred.

Steve Glanstein, Chair

SB-729-SD-1

Submitted on: 3/14/2023 7:35:49 AM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Mark McKellar	Law Offices of Mark K. McKellar, LLLC	Oppose	Written Testimony Only

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 729, S.D.1 (“S.B.729”). This measure is intended, in part, to require cooperative, planned community association, and condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapters 421I, 421J, or 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leader course completion certificate from a course approved by the real estate commission.” Members elected to the board before the effective of the Act will be required to “obtain the course completion certificate within one year of the effect date” of the Act. I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations and planned community 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. Section 514B-106 of the Hawaii Revised Statutes (“HRS”) 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.”

Chapter 414D of the Hawaii Revised Statutes, 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.

It is extremely rare for a planned community associations not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making S.B. 729 unnecessary. Cooperatives are governed by HRS Chapter 414 in addition to HRS Chapter 421I. HRS Sections 414-221 and 414-233 impose duties upon directors and officers similar to HRS Sections 414D-149 and 414D-155.

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 community 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 corporation’s articles of incorporation, bylaws, rules and regulations” and the applicable statute, HRS Chapters 421J or 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, S.B. 729 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to track and retain board members’ written certificates and course completion certificates, in practice, imposing legal requirements for 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. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000. (To put things into perspective, to comply with legal requirements, incorporated associations must file annual reports with the DCCA showing the members on boards on a specific date, and condominium associations must file biennial reports with the Real Estate Commission showing, among other things, the members on boards on a specific date. The HRS does not impose recordkeeping requirements on boards and managing agents that are in any way similar to S.B. 729).

Third, 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.

Fourth, under S.B. 729, board members who fail to review the governing documents and HRS, and attend a board leader course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations. 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? . 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.

Fifth, 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 leader 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. Some members may be confused by the requirement to “review” documents and statutes, as discussed above, and be reluctant to serve on boards given the ambiguous legal requirements. Furthermore, in light of

S.B. 729, by having to review the governing documents and HRS, and complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret. Likewise, lawyers and jurists have been challenged by numerous provisions of Chapters 421J and 514B.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they reviewed the governing documents and/or HRS, or failed to attend the board leader course.

Sixth, it is not known whether it will be possible to present board leader courses for planned community associations and condominium associations more than once a year. Currently, workshops are presented by volunteers. S.B. 729 will require board leader courses to be presented throughout the year because directors are elected throughout the entire year. Additionally, it is not likely that an organization would be equipped to educate all of the serving directors in Hawaii, since there are probably in excess of 10,000 directors serving at any given time.

The remainder of S.B. 729 will drastically change the role of the real estate commission. It will require cooperatives formed under HRS Chapter 421I and planned community associations formed under HRS Chapter 421J to register with the real estate commission on a biennial basis and pay a fee. It will require the real estate commission to set up educational trust funds to provide education for cooperatives and planned community associations. This will undoubtedly open the door to broader regulations in the future. These broad sweeping changes were not initially included in S.B. 729. They were added in S.B. 729, S.D.1. Changes of this magnitude should not be made in haste as appears to be the case here. Changes of this magnitude should be first carefully studied and reviewed.

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. Finally, this bill will dramatically change the role of the real estate commission without any prior meaningful study of the issue.

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

Sincerely,

Mark McKellar

Hui 'Oia'i'o

**House of Representatives
Committee on Housing
Thursday, March 15, 2023
9:00 a.m.**

To: Chair Representative Troy Hashimoto
Re: SB 729, SD 1, Relating to Board Members

Aloha Chair Hashimoto, Vice-Chair Aiu, 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.**

Kokua Council, one of Hawaii's oldest advocacy organizations and of which I have been President since 2020, submitted proposals to the 2023 Legislature which 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 summaries of studies prepared by the Legislative Reference Bureau as far back as 1989¹ and the Real Estate Commission in 1991² 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)."

These are relevant excerpts from the 1990 LRB 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

¹ https://lrh.hawaii.gov/wp-content/uploads/1989_CondominiumGovernance.pdf

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

perspectives and facilities 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 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..."

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 SD 1.

The recently reported One Archer Lane incident, 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, 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 crisis³, which may have been circumvented if Directors were aware of their responsibilities and the potential consequences of failing their duties.

³For some publicly documented examples, see <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/page.jsp?property=yht&page=links>

Hui 'Oia'i'o

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 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 series⁴ 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.

⁴ <https://cca.hawaii.gov/reb/files/2022/12/CB2212.pdf>



LATE

March 14, 2023

Representative Hashimoto, Chair
Representative Aiu, Vice Chair
Members of the Committee

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

We OPPOSE S.B. 729, S.D.1 (“S.B.729”). This measure is intended, in part, to require cooperative, planned community association, and condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapters 421I, 421J, or 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leader course completion certificate from a course approved by the real estate commission.” Members elected to the board before the effective of the Act will be required to “obtain the course completion certificate within one year of the effect date” of the Act. We oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations and planned community 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. Section 514B-106 of the Hawaii Revised Statutes (“HRS”) 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.”

Chapter 414D of the Hawaii Revised Statutes, 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.

It is extremely rare for a planned community associations not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association and the Waikoloa Village Association, making S.B. 729 unnecessary. Cooperatives are governed by HRS Chapter 414 in addition to HRS Chapter 421I. HRS Sections 414-221 and 414-233 impose duties upon directors and officers similar to HRS Sections 414D-149 and 414D-155.

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 community 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 corporation’s articles of incorporation, bylaws, rules and regulations” and the applicable statute, HRS Chapters 421J or 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, S.B. 729 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to track and retain board members’ written certificates and course completion certificates, in practice, imposing legal requirements for 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.

There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although we are not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000. (To put things into perspective, to comply with legal requirements, incorporated associations must file annual reports with the DCCA showing the members on boards on a specific date, and condominium associations must file biennial reports with the Real Estate Commission showing, among other things, the members on boards on a specific date. The HRS does not impose recordkeeping requirements on boards and managing agents that are in any way similar to S.B. 729).

Third, S.B. 729 imposes unprecedented duties upon board members of associations. To my knowledge, we 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.

Fourth, under S.B. 729, board members who fail to review the governing documents and HRS, and attend a board leader course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations. 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? 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.

Fifth, 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 leader 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. Some members may be confused by the requirement to “review” documents and statutes, as discussed above, and be reluctant to serve on boards given the ambiguous legal requirements. Furthermore, in light of S.B. 729, by having to review the governing documents and HRS, and complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of

community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret. Likewise, lawyers and jurists have been challenged by numerous provisions of Chapters 421J and 514B.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they reviewed the governing documents and/or HRS, or failed to attend the board leader course.

Sixth, it is not known whether it will be possible to present board leader courses for planned community associations and condominium associations more than once a year. Currently, workshops are presented by volunteers. S.B. 729 will require board leader courses to be presented throughout the year because directors are elected throughout the entire year. Additionally, it is not likely that an organization would be equipped to educate all of the serving directors in Hawaii, since there are probably in excess of 10,000 directors serving at any given time.

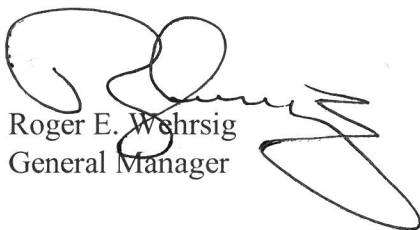
The remainder of S.B. 729 will drastically change the role of the real estate commission. It will require cooperatives formed under HRS Chapter 421I and planned community associations formed under HRS Chapter 421J to register with the real estate commission on a biennial basis and pay a fee. It will require the real estate commission to set up educational trust funds to provide education for cooperatives and planned community associations. This will undoubtedly open the door to broader regulations in the future. These broad sweeping changes were not initially included in S.B. 729. They were added in S.B. 729, S.D.1. Changes of this magnitude should not be made in haste as appears to be the case here. Changes of this magnitude should be first carefully studied and reviewed.

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. Finally, this bill will dramatically change the role of the real estate commission without any prior meaningful study of the issue.

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

Sincerely,
On Behalf of the Board of Directors
Waikoloa Village Association

Roger E. Wehrsig
General Manager





Princeville *at Hanalei* Community Association

Enhancing the Quality of Life and Princeville Experience for its Members

March 14, 2023

Via website: capitol.hawaii.gov

LATE

Chair Troy Hashimoto & Members of the Committee on Housing
State of Hawai'i
House of Representatives
Committee on Housing
415 South Beretania Street
Honolulu, HI 96813

Re: Bill 729, SD1 – A BILL RELATING TO BOARD MEMBERS.

Aloha Chair Hashimoto and Members of the Committee on Housing,

Princeville at Hanalei Community Association (PHCA) is a master-planned community incorporated on Kauai in 1971 which is comprised of 772 single family homes, 32 multi-family properties including condominiums and timeshares, and one hotel. PHCA is administered by its Board of Directors who are elected to represent the owners of over 3,250 dwellings with responsibility to govern and maintain the Common Areas and the roads, among other things, and to enforce the protective covenants, including design and architectural restrictions, for the mutual benefit and protection of the Owners.

PHCA **opposes** SB729 SD1 and respectfully requests that this bill be rejected.

- Planned community associations were set up by law to be self-governing entities with minimal government intervention. Assigning the Real Estate Commission (“REC”) responsibility to approve and administer board leadership courses and implementing a trust fund fee to fund this effort is not consistent with the philosophy of minimal government intervention.
- Failure to pay the proposed education trust fund fee should not negatively impact the ability of the planned community association to collect or foreclose on any lien.
- Board members should not be required to certify that they have received “proper education and training” when curriculum and training requirements are defined by the REC.

PHCA has been successfully governing itself for over 50 years and we are supportive of board education through self-governance.

PHCA appreciates having the opportunity to provide testimony regarding Bill 729, SD1 and we urge the committee to oppose Bill 729, SD1.

Respectfully,

Patti Thiele
President, Board of Directors

SB-729-SD-1

Submitted on: 3/11/2023 4:15:17 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Individual	Oppose	Written Testimony Only

Comments:

I support any law that supports and provides for **voluntary** education for board members. I support the real estate commission developing or approving appropriate training. All of the proposed certifications and attestations will only make it difficult to get volunteer board members. Create the courses and let the industry or the condo decide on the best way to implement.

This Bill establishes new education trust funds for co-ops and homeowner associations. Last count there were only about 10 co-ops remaining in Hawaii. Hardly enough remaining to create all of this cost and regulation.

Homeowner associations are very different from condos and more discussion as provided for in HB1509 would be prudent.

The Bill is too complex and an over reaction.

SB-729-SD-1

Submitted on: 3/12/2023 8:23:04 AM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Leimomi Khan	Individual	Support	Written Testimony Only

Comments:

Support, especially those provisions requiring board members to certify the receipt and review of certain documents and complete a board leader course approved by the Real Estate Commission. Preventative measure that may help Board of Directors to make sound decisions, thus avoiding misuse of funds, costly complaints and/or suits.

SB-729-SD-1

Submitted on: 3/12/2023 10:24:19 AM

Testimony for HSG on 3/15/2023 9:00:00 AM

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.

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, 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, and it could indirectly expose board members to personal liability.

Please defer this bill.

SB-729-SD-1

Submitted on: 3/12/2023 12:11:10 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Renate Alarcon	Individual	Support	Written Testimony Only

Comments:

I am in FULL SUPPORT of SB729, the much needed Bill for a VERY long time. My go to place is the Hawaii State Real Estate Commission, they have been so very helpful, knowledgeable and professional in order to understand HRS 514B and Chapters 421 I and J and others. If our board would be proper educated, the Real Estate Commission would get less phone calls from me and other condo owners. I do my home work and want to make sure that I understand the By Laws, House Rules and incorporate HRS 514B and Chapters when I approach the Board, it is actual the Board's responsibility to incorporate all that.

There is already so much information available from the Hawaii State Real Estate Commission, the board needs to be guided to that office and certified.

Our Board members do not apply our By Laws, House Rules HRS 514 B And Chapters 421 I and J, as required. Presently, it is a free for all and communication is non existence. When discussing issues or pointing out problems, the board takes it on to personal and ego level and argue with nonsensical answer, Stalling or Gaslighting, not getting the job done.

That is why accountability is needed for comfort and sanity to the residents, we are a community in much needed help of an educated, certified and knowledgeable board. These buildings are worth millions and millions of dollars, the bottom line it is a business, we pay our taxes, the Board of the Association, must biennial register our condo with the Hawaii State Real Estate Commission, there has to be set standards and accountability to the Board, at present, there is sadly none. With the approved SB 729, this then will be one stop shop approach to the Hawaii State Real Estate Commission.

With the proper training, education and certification, we are on the right track for the board to accomplish their fiduciary duties as required. If the board members receive the proper training, education turns into knowledge, awareness and provides communication skills. Presently, if the board members would behave in their daily jobs, as they do at the present time as board member, they all would be out of a job.

Our board members receive \$50.00 per meeting, it is a Volunteer position and they take on the responsibility by providing their fiduciary duty to their residence, there is no excuse, oh I am or they are volunteers, there are just no excuses not doing their job, accountability is required.

Property Manager, Resident Manager also need proper education, training and certification.

Thank you for your time and consideration of this Bill

Respectfully,

Renate

SB-729-SD-1

Submitted on: 3/13/2023 9:49:53 AM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Anne Anderson	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 729, S.D.1 (“S.B. 729”). This measure is intended, in part, to require cooperative, planned community association, and condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapters 421I, 421J, or 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leader course completion certificate from a course approved by the real estate commission.” Members elected to the board before the effective of the Act will be required to “obtain the course completion certificate within one year of the effect date” of the Act. I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations and planned community 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. Section 514B-106 of the Hawaii Revised Statutes (“HRS”) 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.”

Chapter 414D of the Hawaii Revised Statutes, 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.

It is extremely rare for a planned community associations not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making S.B. 729 unnecessary. Cooperatives are governed by HRS Chapter 414 in

addition to HRS Chapter 421I. HRS Sections 414-221 and 414-233 impose duties upon directors and officers similar to HRS Sections 414D-149 and 414D-155.

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 community 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 corporation’s articles of incorporation, bylaws, rules and regulations” and the applicable statute, HRS Chapters 421J or 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, S.B. 729 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to track and retain board members’ written certificates and course completion certificates, in practice, imposing legal requirements for 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. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000. (To put things into perspective, to comply with legal requirements, incorporated associations must file annual reports with the DCCA showing the members on boards on a specific date, and condominium associations must file biennial reports with the Real Estate Commission showing, among other things, the members on boards on a specific date. The HRS does not impose recordkeeping requirements on boards and managing agents that are in any way similar to S.B. 729)

Third, 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.

Fourth, under S.B. 729, board members who fail to review the governing documents and HRS, and attend a board leader course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations. 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? . 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.

Fifth, 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 leader 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. Some members may be confused by the requirement to “review” documents and statutes, as discussed above, and be reluctant to serve on boards given the ambiguous legal requirements. Furthermore, in light of S.B. 729, by having to review the governing documents and HRS, and complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret. Likewise, lawyers and jurists have been challenged by numerous provisions of Chapters 421J and 514B.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they reviewed the governing documents and/or HRS, or failed to attend the board leader course.

Sixth, it is not known whether it will be possible to present board leader courses for planned community associations and condominium associations more than once a year. Currently, workshops are presented by volunteers. S.B. 729 will require board leader courses to be presented throughout the year because directors are elected throughout the entire year. Additionally, it is not likely that an organization would be equipped to educate all of the serving directors in Hawaii, since there are probably in excess of 10,000 directors serving at any given time.

The remainder of S.B. 729 will drastically change the role of the real estate commission. It will require cooperatives formed under HRS Chapter 421I and planned community associations

formed under HRS Chapter 421J to register with the real estate commission on a biennial basis and pay a fee. It will require the real estate commission to set up educational trust funds to provide education for cooperatives and planned community associations. This will undoubtedly open the door to broader regulations in the future. se broad sweeping changes were not initially included in S.B. 729. y were added in S.B. 729, S.D.1. Changes of this magnitude should not be made in haste as appears to be the case here. Changes of this magnitude should be first carefully studied and reviewed.

In summary, 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. Finally, this bill will dramatically change the role of the real estate commission without any prior meaningful study of the issue.

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

Sincerely,

Anne Anderson

SB-729-SD-1

Submitted on: 3/13/2023 10:21:48 AM

Testimony for HSG on 3/15/2023 9:00:00 AM

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

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 729, S.D.1 (“S.B.729”). This measure is intended, in part, to require cooperative, planned community association, and condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapters 421I, 421J, or 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leader course completion certificate from a course approved by the real estate commission.” Members elected to the board before the effective of the Act will be required to “obtain the course completion certificate within one year of the effect date” of the Act. I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations and planned community 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. Section 514B-106 of the Hawaii Revised Statutes (“HRS”) 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.”

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

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S.B. 729, by having to review the governing documents and HRS, and complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret. Likewise, lawyers and jurists have been challenged by numerous provisions of Chapters 421J and 514B.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they reviewed the governing documents and/or HRS, or failed to attend the board leader course.

Sixth, it is not known whether it will be possible to present board leader courses for planned community associations and condominium associations more than once a year. Currently, workshops are presented by volunteers. S.B. 729 will require board leader courses to be presented throughout the year because directors are elected throughout the entire year. Additionally, it is not likely that an organization would be equipped to educate all of the serving directors in Hawaii, since there are probably in excess of 10,000 directors serving at any given time.

The remainder of S.B. 729 will drastically change the role of the real estate commission. It will require cooperatives formed under HRS Chapter 421I and planned community associations formed under HRS Chapter 421J to register with the real estate commission on a biennial basis and pay a fee. It will require the real estate commission to set up educational trust funds to provide education for cooperatives and planned community associations. This will undoubtedly open the door to broader regulations in the future. These broad sweeping changes were not initially included in S.B. 729. They were added in S.B. 729, S.D.1. Changes of this magnitude should not be made in haste as appears to be the case here. Changes of this magnitude should be first carefully studied and reviewed.

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. Finally, this bill will dramatically change the role of the real estate commission without any prior meaningful study of the issue.

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

Sincerely,

Paul A. Ireland Koftinow

SB-729-SD-1

Submitted on: 3/13/2023 11:19:12 AM

Testimony for HSG on 3/15/2023 9:00:00 AM

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

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 729, S.D.1 (“S.B.729”). This measure is intended, in part, to require cooperative, planned community association, and condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapters 421I, 421J, or 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leader course completion certificate from a course approved by the real estate commission.” Members elected to the board before the effective of the Act will be required to “obtain the course completion certificate within one year of the effect date” of the Act. I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations and planned community 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.

Sincerely,

Mary Freeman

Ewa Beach

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 729, S.D.1 (“S.B.729”). This measure is intended, in part, to require cooperative, planned community association, and condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapters 421I, 421J, or 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leader course completion certificate from a course approved by the real estate commission.”

I oppose this measure because it will impose unreasonable administrative burdens on condominium associations and planned community 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 contains ambiguous language that is bound to lead to litigation.

S.B. 729 will impose major administrative burdens on associations and property management companies.

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 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.

Any director who fails to sign a written certificate or complete a board leader course will be acting in violation of the law.

I urge the committee to permanently defer this bill.

Sincerely,
Grant Oka

SB-729-SD-1

Submitted on: 3/13/2023 1:34:20 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Lance S. Fujisaki	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 729, S.D.1 ("S.B.729"). This measure is intended, in part, to require cooperative, planned community association, and condominium association board members to (1) certify that they have received and reviewed the association's governing documents and Chapters 421I, 421J, or 514B of the Hawaii Revised Statutes ("HRS"), and (2) obtain a "board leader course completion certificate from a course approved by the real estate commission." Members elected to the board before the effective of the Act will be required to "obtain the course completion certificate within one year of the effect date" of the Act. I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations and planned community 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. Section 514B-106 of the Hawaii Revised Statutes ("HRS") 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."

Chapter 414D of the Hawaii Revised Statutes, 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.

It is extremely rare for a planned community associations not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making S.B. 729 unnecessary. Cooperatives are governed by HRS Chapter 414 in

addition to HRS Chapter 421I. HRS Sections 414-221 and 414-233 impose duties upon directors and officers similar to HRS Sections 414D-149 and 414D-155.

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 community 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 corporation's articles of incorporation, bylaws, rules and regulations" and the applicable statute, HRS Chapters 421J or 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, S.B. 729 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to track and retain board members' written certificates and course completion certificates, in practice, imposing legal requirements for 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. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000. (To put things into perspective, to comply with legal requirements, incorporated associations must file annual reports with the DCCA showing the members on boards on a specific date, and condominium associations must file biennial reports with the Real Estate Commission showing, among other things, the members on boards on a specific date. The HRS does not impose recordkeeping requirements on boards and managing agents that are in any way similar to S.B. 729).

Third, 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.

Fourth, under S.B. 729, board members who fail to review the governing documents and HRS, and attend a board leader course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations. 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? . 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.

Fifth, 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 leader 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. Some members may be confused by the requirement to "review" documents and statutes, as discussed above, and be reluctant to serve on boards given the ambiguous legal requirements. Furthermore, in light of S.B. 729, by having to review the governing documents and HRS, and complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret. Likewise, lawyers and jurists have been challenged by numerous provisions of Chapters 421J and 514B.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they reviewed the governing documents and/or HRS, or failed to attend the board leader course.

Sixth, it is not known whether it will be possible to present board leader courses for planned community associations and condominium associations more than once a year. Currently, workshops are presented by volunteers. S.B. 729 will require board leader courses to be presented throughout the year because directors are elected throughout the entire year. Additionally, it is not likely that an organization would be equipped to educate all of the serving directors in Hawaii, since there are probably in excess of 10,000 directors serving at any given time.

The remainder of S.B. 729 will drastically change the role of the real estate commission. It will require cooperatives formed under HRS Chapter 421I and planned community associations formed under HRS Chapter 421J to register with the real estate commission on a biennial basis and pay a fee. It will require the real estate commission to set up educational trust funds to provide education for cooperatives and planned community associations. This will undoubtedly

open the door to broader regulations in the future. These broad sweeping changes were not initially included in S.B. 729. They were added in S.B. 729, S.D.1. Changes of this magnitude should not be made in haste as appears to be the case here. Changes of this magnitude should be first carefully studied and reviewed.

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. Finally, this bill will dramatically change the role of the real estate commission without any prior meaningful study of the issue.

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

Sincerely,

Lance Fujisaki

SB-729-SD-1

Submitted on: 3/13/2023 2:29:02 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Sandra Jamora	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 729, S.D.1 (“S.B.729”). This measure is intended, in part, to require cooperative, planned community association, and condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapters 421I, 421J, or 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leader course completion certificate from a course approved by the real estate commission.” Members elected to the board before the effective of the Act will be required to “obtain the course completion certificate within one year of the effect date” of the Act. I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations and planned community 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. Section 514B-106 of the Hawaii Revised Statutes (“HRS”) 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.”

Chapter 414D of the Hawaii Revised Statutes, 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.

It is extremely rare for a planned community associations not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making S.B. 729 unnecessary. Cooperatives are governed by HRS Chapter 414 in

addition to HRS Chapter 421I. HRS Sections 414-221 and 414-233 impose duties upon directors and officers similar to HRS Sections 414D-149 and 414D-155.

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 community 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 corporation’s articles of incorporation, bylaws, rules and regulations” and the applicable statute, HRS Chapters 421J or 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, S.B. 729 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to track and retain board members’ written certificates and course completion certificates, in practice, imposing legal requirements for 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. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000. (To put things into perspective, to comply with legal requirements, incorporated associations must file annual reports with the DCCA showing the members on boards on a specific date, and condominium associations must file biennial reports with the Real Estate Commission showing, among other things, the members on boards on a specific date. The HRS does not impose recordkeeping requirements on boards and managing agents that are in any way similar to S.B. 729).

Third, 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.

Fourth, under S.B. 729, board members who fail to review the governing documents and HRS, and attend a board leader course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations. 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? . 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.

Fifth, 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 leader 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. Some members may be confused by the requirement to “review” documents and statutes, as discussed above, and be reluctant to serve on boards given the ambiguous legal requirements. Furthermore, in light of S.B. 729, by having to review the governing documents and HRS, and complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret. Likewise, lawyers and jurists have been challenged by numerous provisions of Chapters 421J and 514B.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they reviewed the governing documents and/or HRS, or failed to attend the board leader course.

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associations formed under HRS Chapter 421J to register with the real estate commission on a biennial basis and pay a fee. It will require the real estate commission to set up educational trust funds to provide education for cooperatives and planned community associations. This will undoubtedly open the door to broader regulations in the future. These broad sweeping changes were not initially included in S.B. 729. They were added in S.B. 729, S.D.1. Changes of this magnitude should not be made in haste as appears to be the case here. Changes of this magnitude should be first carefully studied and reviewed.

2. 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. Finally, this bill will dramatically change the role of the real estate commission without any prior meaningful study of the issue.

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

Sincerely,

Sandra Jamora

SB-729-SD-1

Submitted on: 3/13/2023 3:28:51 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Primrose K. Leong-Nakamoto	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 729, S.D.1 (“S.B.729”). This measure is intended, in part, to require cooperative, planned community association and condominium association board members to (1) certify that they have received and reviewed the association’s governing documents and Chapters 421I, 421J, or 514B of the Hawaii Revised Statutes (“HRS”), and (2) obtain a “board leader course completion certificate from a course approved by the real estate commission.” Members elected to the board before the effects of the Act will be required to “obtain the course completion certificate within one year of the effective date” of the Act. I oppose this measure because it is unnecessary given the existing legal requirements, it will impose unreasonable administrative burdens on condominium associations and planned community 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.

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It is extremely rare for a planned community association not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making S.B. 729 unnecessary. Cooperatives are governed by HRS Chapter 414 in

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commission, board, or committee to “review” the governing documents of the members’ association, organization, or agency, or the HRS.

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The remainder of S.B. 729 will drastically change the role of the real estate commission. It will require cooperatives formed under HRS Chapter 421I and planned community associations

formed under HRS Chapter 421J to register with the real estate commission on a biennial basis and pay a fee. It will require the real estate commission to set up educational trust funds to provide education for cooperatives and planned community associations. This will undoubtedly open the door to broader regulations in the future. These broad sweeping changes were not initially included in S.B. 729. They were added in S.B. 729, S.D.1. Changes of this magnitude should not be made in haste as appears to be the case here. Changes of this magnitude should be first carefully studied and reviewed.

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. Finally, this bill will dramatically change the role of the real estate commission without any prior meaningful study of the issue.

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

Sincerely,

Primrose K. Leong-Nakamoto (S)

SB-729-SD-1

Submitted on: 3/13/2023 6:33:09 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

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

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 729, S.D.1 (“S.B.729”).

S.B. 729 is unnecessary because board members already have a statutory fiduciary duty to their associations. Section 514B-106 of the Hawaii Revised Statutes (“HRS”) 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.”

Chapter 414D of the Hawaii Revised Statutes, 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.

It is extremely rare for a planned community associations not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making S.B. 729 unnecessary. Cooperatives are governed by HRS Chapter 414 in addition to HRS Chapter 421I. HRS Sections 414-221 and 414-233 impose duties upon directors and officers similar to HRS Sections 414D-149 and 414D-155.

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 community 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 corporation’s articles of incorporation, bylaws, rules and regulations” and the applicable statute, HRS Chapters 421J or 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, S.B. 729 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to track and retain board members’ written certificates and course completion certificates, in practice, imposing legal requirements for 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. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000. (To put things into perspective, to comply with legal requirements, incorporated associations must file annual reports with the DCCA showing the members on boards on a specific date, and condominium associations must file biennial reports with the Real Estate Commission showing, among other things, the members on boards on a specific date. The HRS does not impose recordkeeping requirements on boards and managing agents that are in any way similar to S.B. 729).

Third, 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.

Fourth, under S.B. 729, board members who fail to review the governing documents and HRS, and attend a board leader course will be disqualified from serving on the board. Disqualification of a member could create huge problems for associations. 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? . 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.

Fifth, 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 leader 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. Some members may be confused by the requirement to “review” documents and statutes, as discussed above, and be reluctant to serve on boards given the ambiguous legal requirements. Furthermore, in light of S.B. 729, by having to review the governing documents and HRS, and complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret. Likewise, lawyers and jurists have been challenged by numerous provisions of Chapters 421J and 514B.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they reviewed the governing documents and/or HRS, or failed to attend the board leader course.

Sixth, it is not known whether it will be possible to present board leader courses for planned community associations and condominium associations more than once a year. Currently, workshops are presented by volunteers. S.B. 729 will require board leader courses to be presented throughout the year because directors are elected throughout the entire year. Additionally, it is not likely that an organization would be equipped to educate all of the serving directors in Hawaii, since there are probably in excess of 10,000 directors serving at any given time.

The remainder of S.B. 729 will drastically change the role of the real estate commission. It will require cooperatives formed under HRS Chapter 421I and planned community associations formed under HRS Chapter 421J to register with the real estate commission on a biennial basis and pay a fee. It will require the real estate commission to set up educational trust funds to provide education for cooperatives and planned community associations. This will undoubtedly open the door to broader regulations in the future. These broad sweeping changes were not initially included in S.B. 729. They were added in S.B. 729, S.D.1. Changes of this magnitude should not be made in haste as appears to be the case here. Changes of this magnitude should be first carefully studied and reviewed.

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. Finally, this bill will dramatically change the role of the real estate commission without any prior meaningful study of the issue.

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

Sincerely,

Carol Walker

SB-729-SD-1

Submitted on: 3/13/2023 8:24:14 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Jeff Sadino	Individual	Support	Written Testimony Only

Comments:

I SUPPORT SB 729 SD1.

Many people from the trade industry say that this bill is “well intentioned” but they still oppose it. It is amazing how many problems they can come up with for Board members being educated about their governance duties! Please keep in mind that the more problems there are in condos, the more money the attorneys make.

Board members 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 legendary ignorance of their governance duties. This Bill is needed because Hawai’i has a huge outsized number of lawsuits against Board members for breaching their fiduciary duties to the AOA, which has resulted in rising insurance costs for everybody.

The trade industry will certainly fear monger 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 is better than not giving them that power in the first place.

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 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 completely ignorant of their governance duties.

Thank you for the opportunity to provide testimony,

Jeff Sadino

SB-729-SD-1

Submitted on: 3/13/2023 8:44:23 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Mark R. Hagadone, Ph.D., FACFE	Individual	Support	Written Testimony Only

Comments:

I am Mark Hagadone a member of the Community Association Institute, Hawaii Chapter (CAI-LAC). I support the intent and purpose of SB729 SD1 with the following amendements, exclude condos with 50 units or less, use the Real Estate Commission to engage a professional to create videos that can be viewed on-line to obtain certification, allow the Reas Estate Commission to use condo-education funds to implement the educational programs, and finally make the effective date a couple of years into the future for time to hold public hearings and to develop online training videos for certification. Sincerely,

Mark Hagadone

Member CAI-LAC

SB-729-SD-1

Submitted on: 3/13/2023 9:34:08 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ace Hodgin, M.D.	Individual	Oppose	Written Testimony Only

Comments:

I am the current Vice President of Princeville at Hanalei Community Association. I oppose SB 729. My view is continued local self governance of community associations is the preferable approach. It allows the needs of the greatest number of residents to be most effectively met. Nobody knows their community better than those who live within it. The main role of all community associations is to keep their community nice, for the benefit of all those who live there. Associations are governed by duly elected peers from within the community to fulfill that duty. If and when the rare difference of opinion occurs the association provides an avenue of fair resolution among neighbors. Please keep our community associations self governing bodies supported by and serving the needs of the overwhelming majority of our neighbors, Thank you. Ace Hodgin, M.D.

SB-729-SD-1

Submitted on: 3/13/2023 11:23:15 PM

Testimony for HSG on 3/15/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Dale A. Head	Individual	Support	Remotely Via Zoom

Comments:

SB729 SD1

Establishes the Cooperative Housing Corporation Education Trust Fund and the Planned Community Association Education Trust Fund. Requires Cooperative Housing Corporations and Planned Community Associations to register with the Department of Commerce and Consumer Affairs. Requires members of boards of directors and officers of condominium associations, cooperative housing corporations, and planned community associations to certify the receipt and review of certain documents and complete a board leader course approved by the Real Estate Commission. Authorizes the Real Estate Commission to use funds from the Condominium Education Trust Fund, Cooperative Housing Corporation Education Trust Fund, and Planned Community Associations Education Trust Fund to finance the provision of board leader courses. Establishes that a board member's failure to certify the receipt and review of certain documents and complete a board leader course approved by the Real Estate Commission shall be grounds for disqualification from the board of directors. Effective 7/1/2050. (SD1)

Aloha Committee Chair Troy N. Hashimoto, Vice Chair Micah P.K. Aiu, and esteemed members Luke A. Evslin, Darius K. Kila, Lisa Kitagawa, Lisa Marten, Richard H.K. Onishi, Chris Todd, and, Lauren Matsumoto.

1. Having looked this over and in consideration of what I learned by residing in a Home Owners Association (HOA) for nearly 35 years, I do very much strongly *support* passage of *SB729 HD1*.
2. While it is somewhat challenging to recruit volunteer HOA members to serve on a Board of Directors, it is simply nuts to oppose them certifying they have read and understand CCRs and ByLaws. Yes, they should be respected enough to provide them with common sense training, not that they be 'loyal' to the Property Management company, which, remarkably, other than processing HOA fess also gets to run elections (an obvious 'conflict of interest' situation they love to hold onto).
3. Having read over already submitted 'testimony' in 'opposition' to this Bill, I recognize the same names of many people who mostly often oppose due process and voting rights in HOAs. They love 'cherry picking' of statute language, for example,

"S.B. 729 is unnecessary because board members already have a statutory fiduciary duty to their associations. Section 514B-106 of the Hawaii Revised Statutes ("HRS") 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.”

That Is laughable as compliance with such guidance is purely voluntary. I have to wonder if those many property management people, for example, would be willing to undergo a delicate surgery procedure by someone who never attended Medical School, but, instead watched a YouTube video on how to do the operation. Or, having attended a Seminar, including scoring a free lunch, then know how to manage both monies and employees. It is humorous. The premise of ‘Self-Government’ by volunteers who are shielded from being required to actually read, understand, and sign a paper they understand, means they are often kept in a state of probable naïveté. A favorite defense being, “I don’t know nothing”.

4. This worthy Bill is decades overdue, in my opinion. Please respect the Public, disregard those common template letters, written by one or perhaps a team of lawyers, and do the right thing, pass *SB729 HD1*.

Respectfully, ***Dale Arthur Head***

[dale.head@aol.com]

Monday 13 March 2023



SB729 SD1

Establishes the Cooperative Housing Corporation Education Trust Fund and the Planned Community Association Education Trust Fund. Requires Cooperative Housing Corporations and Planned Community Associations to register with the Department of Commerce and Consumer Affairs. Requires members of boards of directors and officers of condominium associations, cooperative housing corporations, and planned community associations to certify the receipt and review of certain documents and complete a board leader course approved by the Real Estate Commission. Authorizes the Real Estate Commission to use funds from the Condominium Education Trust Fund, Cooperative Housing Corporation Education Trust Fund, and Planned Community Associations Education Trust Fund to finance the provision of board leader courses. Establishes that a board member's failure to certify the receipt and review of certain documents and complete a board leader course approved by the Real Estate Commission shall be grounds for disqualification from the board of directors. Effective 7/1/2050. (SD1)

Aloha Committee Chair Troy N. Hashimoto, Vice Chair Micah P.K. Aiu, and esteemed members Luke A. Evslin, Darius K. Kila, Lisa Kitagawa, Lisa Marten, Richard H.K. Onishi, Chris Todd, and, Lauren Matsumoto.

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4. This worthy Bill is decades overdue, in my opinion. Please respect the Public, disregard those common template letters, written by one or perhaps a team of lawyers, and do the right thing, pass *SB729 HD1*.

Respectfully, *Dale Arthur Head* [dale.head@aol.com} Monday 13 March 2023



Testimony In Support of SB729 SD1

Submitted for: Housing Committee Hearing, scheduled to be heard on Wednesday, 3/15/23 at 9:00 AM.

SB729 SD1 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 SD1, 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 SD1.

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

2nd Vice President, Kokua Council
Board Member, Waikiki Neighborhood Board