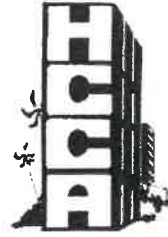


**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 13, 2023

Sen. Jarrett Keohokalole, Chair
Sen. Carol Fukunaga, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: Testimony in Support of
SB 729 RE Board Members (w/amendments)
Hearing: Thursday, February 16, 2023, 9:30 a.m., Conf. Rm. #229

Chair Keohokalole, Vice-Chair Fukunaga and Members of the Committee:

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

HCCA strongly supports the intent and purpose of SB 729 and believes that requiring board members to acknowledge receipt and review of their governing documents and to obtain certification that they have completed a training course in community association governance would improve their decision-making and governance skills and may minimize disputes by and among owners and their boards.

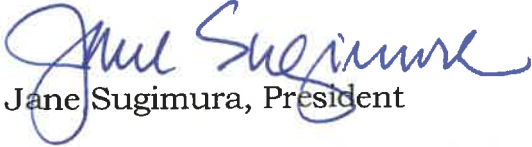
HCCA suggest the following amendments:

- Require board members to comply with both the requirement to (i) certify in writing that they have received **and reviewed** their governing documents and **a copy of Chapters 421I, 421J or 514B** and complete a training or education course in governance. At line page 2, line 8, and at page 3, line 12 and at page 8, line 8, **change “or” to “and”**.
- Require all board members to (i) certify receipt and review of their governing documents and their applicable HRS chapter within 90 days after the effective date of bill and not their election since most association by-laws call for staggered terms and (ii) complete their training/education within 1 year from the effective date of the bill.
- The training/education should be done under the direction of the Real Estate Commission after first obtaining input from stakeholders as to the curriculum to be used. 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. With respect to 421I and 421J entities, a new provision should be added to require registration with the DCCA and separate education funds set up for those entities to be used to implement the educational requirements under this bill for those entities.

- Include a provision that failure to comply with both requirements would disqualify a board member from serving on his or her board.
- Make the effective date of this bill January 1, 2024.

Thank you for the opportunity to testify on this matter.



Jane Sugimura, President

SB-729

Submitted on: 2/14/2023 8:58:14 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|----------------|
| R Laree McGuire | Individual | Oppose | In Person |

Comments:

I oppose. It is very difficult for many associations to persuade owners to run for the board. It is a thankless job and often requires a lot of time and energy be spent on addressing association matters. While I understand the rationale for the Bill, the consequences will outweigh the benefits, especially with respect to the smaller associations and especially with the rise in D&O claims. Governing documents can be very complex and difficult to understand even for the more experienced condo or PCA owner. The requirement to read (and some would say to understand) the governing documents will be just one more reason why someone will not run for the board. Harsh, but true.

Respectfully submitted,

Laree McGuire

Testimony of the Real Estate Commission

**Before the
Senate Committee on Commerce and Consumer Protection
Thursday, February 16, 2023
9:30 a.m.
Via Videoconference**

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

Chair Keohokalole and Members of the Committee:

My name is Derrick Yamane, and I am the Chairperson of the Real Estate Commission (Commission). The Commission opposes this bill with respect to the provisions pertaining to Hawaii Revised Statutes (HRS) chapter 514B (Condominiums). The Commission does not have jurisdiction over or enforce HRS chapters 421I (Cooperative Housing Corporations) or 421J (Planned Community Associations).

The purpose of this bill is to require members boards of directors and officers of the condominium associations, cooperative housing corporations, and planned community associations to certify the receipt and reading of certain documents or complete a board leader course from an instructor certified by the Community Associations Institute, or similar nationally recognized organization.

As this bill proposes new regulatory controls over members of the board of directors of an association of unit owners, a sunrise analysis must be completed before consideration may be given to this measure. Pursuant to HRS section 26H-6, “[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. . . .”

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



February 13, 2023

VIA WEB TRANSMITTAL

Hearing Date: Thursday, February 16, 2023

Time: 9.30 AM

Venue: Conference Room 229, State Capitol

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Senate Committee on Commerce and Consumer Protection

Re : Hawaii Chapter, Community Associations Institute's
Testimony in SUPPORT with Amendments of SB 729

Dear Chair Keohokalole, Vice-Chair Fukunaga and Committee Members

CAI supports **SB 729** in educating and training of Board Members to understand their responsibilities and fulfill their fiduciary duty to a Community Association, but State mandated requirements must be carefully evaluated.

Community Association Board Members are essentially volunteers elected by their co-owners and serve for altruistic reasons with the best interests of their communities in mind. The existing law, HRS514B has impose a level of care and loyalty on Board Members to their Associations to the level and extent required of an officer or director of a corporation organized under chapter 414D. As such, it is imperative that Board Members receive proper education and training, however, any State mandated education requirement should be focused on incentives and tools to encourage Boards to utilize existing industry resources to achieve educational goals rather than create new processes or burdens.

CAI proposes the following amendment to the language used in **SB 729** for the Committee's consideration (deletion marked by ~~striketrough~~, and addition marked in ***bold italics***):

Within ninety days after being elected or appointed to the board, each officer and member shall:

- (1) Certify in writing to the secretary of the corporation/association that the officer or member has received and read the corporation/association's articles of incorporation, declaration, articles, bylaws, and house rules; or
- (2) ~~Obtain a board leader course completion certificate from an instructor certified by the Community Associations Institute, or similar nationally recognized organization~~**Certify in writing to the secretary of the association that the officer or member will work to uphold such corporation/association documents and policies, and fulfill their fiduciary duties to the corporation/association's members.**

The association shall retain each officer and member's written certification ~~or course completion certificate~~ for the duration of their term. ***Board members are encouraged to engage in training to increase their level of knowledge, professionalism, competence, and effectiveness as leaders of the corporation/association. Notwithstanding anything provided herein, Failure by any Board Member to have such written certification does not affect the validity of any board action.***

There are many Associations that are having difficulty finding members who are willing to volunteer, run for Board position, and serve as directors or officers. CAI is concerned that imposing the proposed mandate on obtaining training from a specific type of instructor may further damp interests among owners to serve as Association directors or officers.

In conclusion, CAI supports **SB 729** with amendment as proposed above. Board education requirements should be focused on a policy that inspires enlightened leadership and effective utilization of existing resources rather than a mandatory requisite that potentially serves to deter homeowner volunteers from serving on Association boards.

Sincerely

Selkie Khoo

Selkie Khoo

CAI LAC Hawaii



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

February 14, 2023

Honorable Senator Jarrett Keohokalole, Chair
Honorable Senator Carol Fukunaga, Vice-Chair
Senate Committee on Commerce and Consumer Protection (CPN)
Hawaii State Capitol, Room 229
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in OPPOSITION to SB729; Hearing Date: February 16, 2023 at 9:30 a.m. at 9:30 a.m. Senate conference room 229 and Zoom; sent via Internet

Aloha Chair Keohokalole, Vice-Chair Fukunaga, and Committee members,

Thank you for the opportunity to provide testimony on this bill. Unfortunately, the notice of hearing only provided us with just over 24 hours to submit testimony. This was too short a time to provide a more extensive analysis. Therefore, I can include only a few of the obvious issues raised by this proposed legislation.

The Hawaii State Association of Parliamentarians (“HSAP”) has been providing professional parliamentary expertise to Hawaii since 1964.

I am the chair of the HSAP Legislative Committee. I’m also an experienced Professional Registered Parliamentarian who has worked with condominium and community associations every year since I began my parliamentary practice in 1983 (more than 2,000 meetings in 40 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2004.

This testimony is provided as part of HSAP’s effort to assist the community based upon our collective experiences with the bylaws and meetings of numerous condominiums, cooperatives, and planned community associations.

This testimony is presented in OPPOSITION to SB729.

Summary of Bill:

The bill proposes to mandate certification that a board member has received and read numerous documents, complete a course of training, and retain a certificate of completion.

It proposed to require reading and training for Cooperatives, Planned Community Associations, and Condominium Associations.

Comments:

The desire to require training is an admirable one. We believe it is well-intentioned.

Unfortunately, it is not realistic. We'll address each area that the bill proposes to amend.

Planned Community Associations: (Chapter 421J; Section 2, starting on page 2, line 16)

We don't even know how many Planned Community Associations exist. They can vary from 2 adjacent lots that maintain a road to an entity such as Mililani Town Association with about 8,934 households.

The bill proposes to amend HRS §421J-3 titled "Board of Directors." However, it inconsistently adds this requirement to officers (Page 3, line 9) whose membership on the board depends upon the bylaws.

There's no existing registration of Planned Community Associations and this may be unenforceable.

Cooperatives: (Chapter 421I; Section 1, starting on page 1, line 1)

There are only a few cooperatives, most of them in Waikiki. In my experience, many of them have converted to condominiums and others have consistently had problems obtaining new board members.

There's no existing registration of Cooperatives and this may be unenforceable.

Condominiums: (Chapter 514B; Section 3, starting on page 3, line 20)

The bill proposes to amend HRS §514B-106 titled, "Board; powers and duties." However, it inconsistently adds this requirement to officers (Page 8, line 4) whose membership on the board depends upon the bylaws. For example, some boards elect assistant treasurers who are not board members.

With about 2,000 condominium associations in Hawaii and an estimated average of about 5 directors, this would total about 10,000 board members requiring course completion within 90 days of their election or appointment.

As an experienced and nationally recognized instructor, I believe it is possible to construct a course with an attorney and property manager to establish a \$100 course for each of these 10,000 board members for an 8 hour class during the summer.

This would total about \$1,000,000.

HRS §514B-61 provides enforcement authority for the Real Estate Commission. This is related to Chapter 514B which applies to condominium associations. There is no such statement of authority for Planned Community Associations (Chapter 421J) and Cooperatives (Chapter 421I).

The bill also fails to address the issue of whether or when directors and officers should be required to have a refresher when the law or their governing documents change.

The bill requires certification of reading and course completion after being elected to the board. There are some boards where the members only receive 1 year terms. They would have to take this course every year.

Board members may be exposed to breach of fiduciary claims if they can't substantiate reading the documents or completing this course.

These are only a few of the unintended consequences. In an era when it is difficult to obtain board members to serve, this bill would cause more harm than good to our community.

Conclusion:

We believe that the bill, though well-intentioned, is unrealistic and unworkable. We respectfully ask that the Committee defer or hold this bill.

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

Sincerely,

Steve Glanstein

Steve Glanstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee

SB-729

Submitted on: 2/12/2023 7:24:04 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|-------------------|
| Jeff Sadino | Individual | Support | Remotely Via Zoom |

Comments:

I SUPPORT SB 729.

Board members are entrusted with an incredible amount of power and too often they have used that power to great harm of individual Owners, either on purpose or on accident out of ignorance. This Bill is needed because Hawai'i has a huge outsized number of lawsuits against Board members for breaching their fiduciary duties to the AOAO, 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 AOAO then they have no business being on the Board in the first place and will likely cause more harm than good.

There will likely be a transition period, but providing education for Board members is not a massively difficult problem and I'm sure the Property Managers and CAI will find a solution to this problem.

Thank you for the opportunity to provide testimony,

Jeff Sadino

Committee on Commerce & Consumer Protection

SB-729

Submitted on: 2/14/2023 8:40:49 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|-------------------------|--------------|--------------------|-------------------|
| Paul A. Ireland Kofinow | Individual | Oppose | Remotely Via Zoom |

Comments:

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

I OPPOSE S.B. 729. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an 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.

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.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, S.B. 729 will raise numerous problems for community associations, CAI and property management companies.

First, 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 retain board members' written certificates or 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.

Second, S.B. 729 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of actions taken by boards, when disqualified members voted on measures before the 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?

Third, like legislators, some board members remain in office for many years. S.B. 729 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, S.B. 729 will discourage many association members from serving on boards. 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. Furthermore, in light of S.B. 729, by having to read the governing documents, or 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.) 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 read the governing documents, or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under S.B. 729. Additionally, it is not likely that CAI or any other 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.

Sixth, S.B. 729 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although S.B. 729 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if S.B. 729 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

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.

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

Sincerely,

Paul A. Ireland Koftinow

Testimony In Support of SB729

Submitted for: Commerce and Consumer Protection, scheduled to be heard on Thursday, 2/16/23 at 9:30 AM.

Aloha Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee,

I strongly support SB729.

SB729 will provide much needed Board of Directors training and certification and will eliminate the “excuses” often made by Directors when they improperly conduct AOA 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. Those on the Board need to be required to go through 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 all 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, 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 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.

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

And I ask you to support and act on SB1201 and SB1202, which were introduced by the Kokua Council on behalf of our kupuna and all residents of Hawaii.

Mahalo,

Gregory Misakian

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

The Kokua Council is one of Hawaii’s oldest elder advocacy groups. We advocate for issues, policies, and legislation that impact the well-being of seniors and our community.

SB-729

Submitted on: 2/11/2023 6:13:40 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|--|---------------------------|------------------------|
| Mike Golojuch, Sr. | Testifying for Palehua Townhouse Association | Support | Written Testimony Only |

Comments:

Palehua Townhouse Association supports the intent of SB729.

Mike Golojuch, Sr., President

14Feb 2023

RE: S. B. #729

01011990

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

I OPPOSE S.B. 729. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association's governing documents, or (2) obtain a "leader course completion certificate from an instructor certified by the Community Associations Institute ("CAI"), or similar nationally recognized organization." **I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an 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.

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.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, S.B. 729 will raise numerous problems for community associations, CAI and property management companies.

First, 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 retain board members' written certificates or 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.

Second, S.B. 729 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of actions taken by boards, when disqualified members voted on measures before the 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?

Third, like legislators, some board members remain in office for many years. **S.B. 729 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?**

Fourth, S.B. 729 will discourage many association members from serving on boards. **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. Furthermore, in light of S.B. 729, by having to read the governing documents, or 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.) 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 read the governing documents, or failed to attend the board leader course.**

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make **it impossible for all board members to be able to attend workshops within ninety days of being elected**, which will deprive them of one of the options under S.B. 729. Additionally, it is not likely that CAI or any other 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.

Sixth, S.B. 729 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although S.B. 729 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if S.B. 729 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

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.

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

Sincerely,

Raymond Tremblay

Waikiki Sunset AOA owner

229 Paoakalani Ave

Honolulu, Hi 96815-3764

SB-729

Submitted on: 2/14/2023 4:41:02 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|-------------------------|-------------------------------------|--------------------|---------------------------|
| Primrose Leong-Nakamoto | Testifying for AOOU POAMOHO CAMP | Oppose | Written Testimony Only |

Comments:

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

I OPPOSE S.B. 729. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an 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.

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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.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, S.B. 729 will raise numerous problems for community associations, CAI and property management companies.

First, 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 retain board members' written certificates or 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.

Second, S.B. 729 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of actions taken by boards, when disqualified members voted on measures before the 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?

Third, like legislators, some board members remain in office for many years. S.B. 729 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, S.B. 729 will discourage many association members from serving on boards. 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. Furthermore, in light of S.B. 729, by having to read the governing documents, or 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.) 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 read the governing documents, or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all

board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under S.B. 729. Additionally, it is not likely that CAI or any other 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.

Sixth, S.B. 729 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although S.B. 729 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if S.B. 729 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

1. 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.

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

Sincerely,

Primrose K. Leong-Nakamoto (S)

Rachel M. Glanstein
1099 Ala Napunani St #901
Honolulu HI 96818
rglanstein@gmail.com

February 15, 2023

Senate Committee on Commerce and Consumer Protection (CPN)
Hawaii State Capitol, Room 229
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in Opposition to SB729

Aloha,

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

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

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

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

I do feel that board members should be familiar with the governing documents and the local laws, but they are volunteers, and a vocal minority of owners shouldn't make near impossible requirements for board member service. This would make it difficult for owners with jobs to serve on boards.

Mahalo,

Rachel M. Glanstein

SB-729

Submitted on: 2/13/2023 2:27:20 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|-----------------------------------|---------------------------|------------------------|
| Idor Harris | Testifying for Honolulu Tower AOA | Oppose | Written Testimony Only |

Comments:

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

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

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

Idor Harris

Resident Manager, Honolulu Tower

SB-729

Submitted on: 2/14/2023 5:59:08 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------|---|--------------------|------------------------|
| Mark McKellar | Testifying for Law Offices of Mark K. McKellar, LLC | Oppose | Written Testimony Only |

Comments:

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

I OPPOSE S.B. 729. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an 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.

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.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, S.B. 729 will raise numerous problems for community associations, CAI and property management companies.

First, 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 retain board members' written certificates or 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.

Second, S.B. 729 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of actions taken by boards, when disqualified members voted on measures before the 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?

Third, like legislators, some board members remain in office for many years. S.B. 729 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, S.B. 729 will discourage many association members from serving on boards. 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. Furthermore, in light of S.B. 729, by having to read the governing documents, or 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.) 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 read the governing documents, or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under S.B. 729. Additionally, it is not likely that CAI or any other 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.

Sixth, S.B. 729 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although S.B. 729 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if S.B. 729 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

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.

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

Sincerely,

Mark McKellar

SB-729

Submitted on: 2/15/2023 8:13:03 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|------------------------------------|---------------------------|------------------------|
| Glenn Toole | Testifying for Keala o Wailea AOOU | Oppose | Written Testimony Only |

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I OPPOSE S.B. 988. This bill will require condominium associations to purchase and maintain earthquake insurance on the common elements, the condominium units, and any personal property items within the condominium units. It also provides that the insurance policy will provide coverage for the full cost of the insured items and property.

This bill will impose a heavy burden on condominium associations which are already struggling with the high cost of property insurance. I have been informed that if condominiums are required to purchase earthquake insurance, their property insurance premiums will increase by 20% to 25% which may be more than many associations can bear.

The bill requires that the coverage be for the “full cost of the insured items and property.” It does not mention deductibles, which could be construed to mean that the coverage must be for the full replacement value, without deductibles. I understand that earthquake insurance comes with a deductible of 5% of the building value, which means that it may not even be possible to buy the insurance required by the bill.

Under the current law, condominiums have no obligation to insure the personal property of owners (other than the unit “as built”); yet this bill would require associations to cover “any personal items within the condominium units.” In other words, this bill would require condominium associations to purchase insurance for diamond rings, paintings, furniture, clothing, etc., of owners. This requirement is completely unreasonable and unworkable. A condominium association cannot possibly be expected to insure the personal property of owners when it has no way of knowing what items of personal property owners maintain in their units. If associations were required to insure personal property, associations would have to take an inventory of all of the personal property inside units (which associations are not capable of doing) and the association would end up paying for insurance covering the expensive personal property of some owners as a common expense. This would be extremely unfair.

Finally, while most associations do maintain property insurance on the condominium units “as built,” they do not maintain, nor are they required to maintain, insurance on improvements and betterments made by owners, such as new cabinets, granite countertops, etc. Yet, the broad language of this bill would require associations to purchase earthquake insurance on these

items. Owners should be responsible for insuring upgrades to their units. Otherwise, all owners would be required to bear the cost of insuring the upgrades made by other owners.

In summary, I oppose this bill because it will be impossible for associations to maintain the insurance required, and it will place undue financial burdens on associations and their members. Please permanently defer this bill.

Respectfully submitted,

Glenn Toole

SB-729

Submitted on: 2/12/2023 9:03:27 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

Board members are volunteers. More than 50% of Hawaii condos are less than 50 units, and many less than 20 units. It certainly is OK to require condos directors of more than 50 units to have an understanding of their association documents. The proposed industry course does not exist. The Real Estate Commission currently offers quality YouTube videos that are a better alternative. This Bill will discourage volunteers.

SB-729

Submitted on: 2/13/2023 2:11:57 PM

Testimony for CPN on 2/16/2023 9:30:00 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 the 2020 election have alleged.

SB-729

Submitted on: 2/14/2023 8:58:36 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

Dear Senator Jarrett, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee: I OPPOSE S.B. 729. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association's governing documents, or (2) obtain a "leader course completion certificate from an instructor certified by the Community Associations Institute ("CAI"), or similar nationally recognized organization." I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an 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.

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.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, S.B. 729 will raise numerous problems for community associations, CAI and property management companies.

First, 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 retain board members' written certificates or 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.

Second, S.B. 729 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of actions taken by boards, when disqualified members voted on measures before the 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?

Third, like legislators, some board members remain in office for many years. S.B. 729 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, S.B. 729 will discourage many association members from serving on boards. 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. Furthermore, in light of S.B. 729, by having to read the governing documents, or 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.) 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 read the governing documents, or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under S.B. 729. Additionally, it is not likely that CAI or any other 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.

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Seventh, given that there are no community resources to meet the board leader course requirement, if S.B. 729 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

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.

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

Sincerely,

Lance Fujisaki

SB-729

Submitted on: 2/14/2023 9:08:25 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

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

I OPPOSE S.B. 729. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an 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.

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1. 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.

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

Sincerely,

Jeff Marsh

Site Manager

The Palms at Wailea AOA

SB-729

Submitted on: 2/14/2023 9:21:41 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------|--------------|--------------------|------------------------|
| Laura Bearden | Individual | Oppose | Written Testimony Only |

Comments:

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

I OPPOSE S.B. 729. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an 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.

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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.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, S.B. 729 will raise numerous problems for community associations, CAI and property management companies.

First, 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 retain board members' written certificates or 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.

Second, S.B. 729 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of actions taken by boards, when disqualified members voted on measures before the 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?

Third, like legislators, some board members remain in office for many years. S.B. 729 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, S.B. 729 will discourage many association members from serving on boards. 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. Furthermore, in light of S.B. 729, by having to read the governing documents, or 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.) 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 read the governing documents, or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under S.B. 729. Additionally, it is not likely that CAI or any other 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.

Sixth, S.B. 729 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although S.B. 729 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if S.B. 729 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

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.

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

Sincerely,

Laura Bearden

SB-729

Submitted on: 2/14/2023 9:53:56 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Lila Mower | Individual | Comments | Written Testimony Only |

Comments:

I support the INTENT of SB 729 and suggest replacing the proposed changes in 421I-3(d), 421J-3(c), and 514B-106(g) with:

Within ninety days after being elected or appointed to the board, each newly elected or appointed director shall certify in writing to the secretary of the association that the director:

(1) Has read the association's declaration, articles of incorporation, bylaws, house rules, and other association documents necessary for the operation of the property;

(2) Shall work to uphold the association's declaration, articles of incorporation, bylaws, house rules, and other association documents to the best of the director's ability; and

(3) Shall faithfully discharge the director's fiduciary duty to the association.

The written certification shall be valid for the entirety of the director's uninterrupted term of office. A director who fails to timely file the written certification shall be automatically suspended from service on the board until the director complies with this subsection. The board may appoint a member to temporarily fill the vacancy during the director's period of suspension. The secretary shall retain a director's written certification for inspection by association members for five years after a director's election or appointment, or the duration of the director's uninterrupted term of office, whichever is longer. Failure to have a written certification on file shall not affect the validity of any board action.

SB-729

Submitted on: 2/14/2023 11:56:14 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

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

I OPPOSE S.B. 729. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an 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.

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.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, S.B. 729 will raise numerous problems for community associations, CAI and property management companies.

First, 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 retain board members' written certificates or 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.

Second, S.B. 729 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of actions taken by boards, when disqualified members voted on measures before the 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?

Third, like legislators, some board members remain in office for many years. S.B. 729 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, S.B. 729 will discourage many association members from serving on boards. 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. Furthermore, in light of S.B. 729, by having to read the governing documents, or 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.) 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 read the governing documents, or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under S.B. 729. Additionally, it is not likely that CAI or any other 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.

Sixth, S.B. 729 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although S.B. 729 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if S.B. 729 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

1. 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.

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

Sincerely,

Carol Walker

SB-729

Submitted on: 2/14/2023 12:35:50 PM

Testimony for CPN on 2/16/2023 9:30:00 AM

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

Comments:

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

I OPPOSE S.B. 729. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an 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.

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.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, S.B. 729 will raise numerous problems for community associations, CAI and property management companies.

First, 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 retain board members' written certificates or 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.

Second, S.B. 729 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of actions taken by boards, when disqualified members voted on measures before the 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?

Third, like legislators, some board members remain in office for many years. S.B. 729 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, S.B. 729 will discourage many association members from serving on boards. 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. Furthermore, in light of S.B. 729, by having to read the governing documents, or 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.) 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 read the governing documents, or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under S.B. 729. Additionally, it is not likely that CAI or any other 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.

Sixth, S.B. 729 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although S.B. 729 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if S.B. 729 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

1. 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.

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

Sincerely,

Mary Freeman

Ewa Beach

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

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

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

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

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

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

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

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

I urge the committee to permanently defer this bill.

Sincerely,

/s/ Pamela J. Schell

SB-729

Submitted on: 2/15/2023 8:18:55 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Adeline N. Porter | Individual | Support | Written Testimony Only |

Comments:

Senator Moriwaki and members of the committee,

I am in strong support of SB 729.

The certification AND class are much needed tools to set standard for members who have volunteered to represent their association.

Thank you for your consideration.

Adeline Porter

SB-729

Submitted on: 2/15/2023 8:56:07 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| David H Levy | Individual | Support | Written Testimony Only |

Comments:

As a retired CPA with 40 years of experience (in California) in the community association industry, it is hard to see any logical argument against requiring a Board member to acknowledge having read the Association's governing documents. But I am well aware that most do not do so. I do not believe that offering the alternative of taking a short educational course, while a good idea, is a substitute for reading a particular association's governing documents - because they are not all the same. Perhaps a possible alternative would be to have the association's attorney read the documents and spend at least one hour reviewing same with ALL Board members within 60 days of the annual meeting/Board election. The tougher question is what to do if the Board member does not comply.

SB-729

Submitted on: 2/15/2023 9:19:10 AM

Testimony for CPN on 2/16/2023 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Nancy Masuda | Individual | Support | Written Testimony Only |

Comments:

I strongly support the passage of SB 729.



February 15, 2023

Senator Jarrett, Chair
Senator Fukunaga, Vice Chair
Members of the Committee:

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

The Waikoloa Village Association desires to note their OPPOSITION to S.B. 729. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association's governing documents, or (2) obtain a "leader course completion certificate from an instructor certified by the Community Associations Institute ("CAI"), or similar nationally recognized organization." We oppose this measure because it is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burden 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.

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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Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, S.B. 729 will raise numerous problems for community associations, CAI and property management companies.

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retain board members' written certificates or 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.

Second, S.B. 729 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will S.B. 729 affect the validity of actions taken by boards, when disqualified members voted on measures before the 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?

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“similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

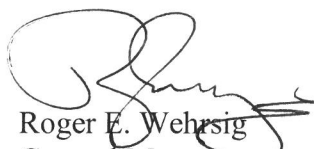
Seventh, given that there are no community resources to meet the board leader course requirement, if S.B. 729 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

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.

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

Sincerely,

ON BEHALF OF THE BOARD OF DIRECTORS
WAIKOLOA VILLAGE ASSOCIATION



Roger E. Wehsig
General Manager