

**HAWAII FIRST REALTY LLC
RB-19713
4167 Kaimamahila Street
Honolulu, HI 96816**

February 12, 2024

COMMITTEE ON COMMERCE PROTECTION AND COMMERCE
Representative Mark Nakashima, Chair
Representative Jackson Sayama, Vice Chair

Opposition to HB2067

Dear Chair Nakashima and Committee Members,

My name is Richard Emery with a 30-year history of condominium management. I am a member of the National Association of Parliamentarians and have attended many condominiums annual meetings.

An organization's governing documents define requirements for an annual meeting and provide representation by proxy. This is true for for-profit, not-for profit, and associations including condominiums across the USA.

A proxy is a voluntary right of a stakeholder (condo owner) to appoint their authorized representative at the meeting. It is a personal choice. An owner has many choices including the Board of Directors. It is common for organizations to include the Board of Directors as an option. In the end, it is the Owner's voluntary choice. Hawaii prides itself on its respect for rights and this proposal is based on a few owners that ignore a stakeholder's rights.

Any association can make changes by owners' amending its own governing documents. The owners of an association should make a decision of change, not the legislature.

It is often forgot beyond the election the regular business of an association to include:

- Approval of minutes. Important as part of real estate sales.
- Approval of tax resolution to preserve its nonprofit tax status.
- Approval of resolutions to repair or maintain the building based typically on a design professional report.
- Approval of New Business proposed by an Owner or the Board.

Often Owner initiatives are unknown until the meeting. Often candidates for election are unknown until nominated at the meeting. At times interested candidates withdraw before the election. Then in some cases there is cumulative voting.

The industry acquired a great deal of experience during the pandemic. It was difficult to verify that the person voting was an owner and authorized to vote. Mail voting ignores the debate held at the meeting when pros and cons are discussed. It is more costly to conduct voting by mail.

I strongly oppose HB2067 for the reasons stated. A proxy is an owner's private right that should not be impaired.

Sincerely,

Richard Emery, RB-17147, RS-8

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 13, 2024

The Honorable Representative Mark M. Nakashima, Chair
The Honorable Representative Jackson D. Sayama, Vice-Chair
House Committee on Consumer Protection and Commerce
415 South Beretania Street, Room 329
Honolulu, HI 96813

RE: HB 2067 (Oppose)

Dear Chair Nakashima, Vice-Chair Sayama and members of the
Committee:

The Community Associations Institute (CAI) is a national and
statewide organization of individuals involved in the operation of
community associations, including homeowners, directors, managers
and business partners of community associations. CAI opposes HB
2067.

Proxies are a mechanism by which owners designate someone to vote
for them at a meeting they cannot attend. Proxies have been a
part of the Hawaii condominium statute for decades. Even before
they were part of the Hawaii statute in the late 1970s, proxies
have been in every condominium document for the simple reason that
they are a democratic process allowing owners the opportunity to
vote or designate someone they trust to vote for them at
association meetings. Every condominium project in the State of
Hawaii allows owners to submit a proxy for association meetings.

HB 2067 would eliminate the option for owners to select the Board
as options for proxies. Before those two options were required to
be on the proxy, board presidents would request proxies from the
owners. Some individuals complained to the legislature that it
unfairly concentrated power with a single individual, so the two
board boxes were eventually incorporated into the law. If you
look at the history of Hawaii's proxy law, you will see that it

The Honorable Representative Mark M. Nakashima, Chair
The Honorable Representative Jackson D. Sayama, Vice-Chair
RE: HB 2067 - Relating to Condominiums
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has changed over ten times because individuals thought that they should be elected and have blamed the process.

The simple fact, however, is that all owners have the right to submit their one-page statements to be mailed by the Association, pursuant to HRS § 514B-123(i), and it is the owners that select who they trust to vote their proxy. The owners selecting their proxyholders know their associations and candidates best. The fact that some owners are unable to garner proxies is part of the democratic process.

The provision requiring the disclosure statement is also confusing. While it is true that associations can hold elections by mail or electronic ballot, the mail or electronic election process is not simple. Most governing documents require that nominations be made from the floor. Those associations that have mail or electronic elections have amended their documents to change the nomination process so that they can be submitted in advance of the meeting. Otherwise, there is no one on the ballot and everyone must be written in. Even that process is not without controversy. Some have complained that nominations before the mail or electronic election deprives newer owners from running for the Board or those owners that thought that the election was going to occur at the meeting.

HB2067 also provides that it will be effective upon its approval. However, changing the law on proxies has an impact that requires more advanced notice. Proxies are normally sent out 30 to 60 days before the meeting. If the law is effective upon approval, associations will not have sufficient time to change their proxies from one legal requirement to the new legal requirement.

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The Honorable Representative Mark M. Nakashima, Chair
The Honorable Representative Jackson D. Sayama, Vice-Chair
RE: HB 2067 - Relating to Condominiums
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For these reasons CAI opposes HB 2067. If you have any questions,
I will be available to answer them.

Very truly yours,

/s/ Dallas H. Walker

Dallas Walker, Esq.
for
The Hawaii Legislative
Action Committee of the
Community Associations
Institute

HB-2067

Submitted on: 2/12/2024 10:00:13 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Idor Harris	Honolulu Tower AOA	Oppose	Written Testimony Only

Comments:

Honolulu Tower is a 396 unit condominium built in 1982. Our residents span all ages, from infants to centenarians.

The Association of Apartment Owners of Honolulu Tower Board of Directors opposes removing the options of giving proxies to the board as a whole and to those directors present at the meeting with the vote to be shared with each director receiving an equal percentage. These options have been legal since 1984 for the former and 1989 for the latter. There is no good reason to remove these options which have been relied on for 35 and 40 years. The owners are comfortable using them. We have been submitting testimony on this subject for several years. Without those options we will not obtain quorum.

It is estimated that 45% of our owners are absentee owners. They do not live on site. Some live elsewhere in Hawaii nei, others on the continent or in international locations. Many of the absentee owners do not participate in the annual meetings. Quorum is obtained from those who live on site. Many feel comfortable giving a proxy for quorum only. That often deprives us from having quorum to vote on other items that arise at the annual meeting, including the management company contract.

Among our owners are many who do not possess smart phones, computers, electronic devices nor do they know how to use such technology. Some rarely leave their apartment. To reach them with important information we do it the old fashioned way: paper delivered to the units.

Requiring that proxy forms include a disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting will create confusion because it implies that all elections may be conducted by electronic, machine or mail voting when that is not the case and something the board and unit owners have not approved.

The Board urges you to defer this bill.

Idor Harris, Resident Manager



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

February 13, 2024

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

RE: Testimony in OPPOSITION to HB2067; Hearing Date: February 14, 2024 at 2:00 p.m. in House Comm. conference room 329/videoconference; sent via Internet

Dear Rep. Mark M. Nakashima, Chair, Rep. Jackson D. Sayama, Vice Chair, and Committee Members:

Thank you for the opportunity to provide testimony on this bill.

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, including more than 100 last year). 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 HB2067.

Summary of Bill:

The Bill proposes major changes to the state law for condominium association meetings:

- A. It proposes to completely remove the use of proxies in condominium meetings, notwithstanding their use in Hawaii for at least 40 years.
- B. This change can affect the bylaws of thousands of condominium associations representing at least 245,467 people in Hawaii that have relied on stable proxy legislation since the enactment of Chapter 514B (statistics are from 2019 and have increased.)
- C. The bill provides a confusing requirement for standard proxy forms with respect to direct election that doesn't match the current reality of association meetings.

A. PROXIES

Current Status:

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

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

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

If association funds are to be used, there is a mandatory posting on the property and equal opportunity for owner solicitation of proxies. Owners have an opportunity to require that their names and statements of up to one page be submitted with the official meeting notice. Many boards go beyond this minimal requirement and e-mail or mail the solicitation to owners in order to attract candidates to the board.

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

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

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

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

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

This balanced approach to proxies has operated successfully for a large majority of condominium and community association owners.

History of Board Majority/Board Equal options for Owners:

Before 1984, the association president received the proxies and generally controlled the meeting and elections. The late 1980s and 1990s saw movements to provide owners with more choices on the proxy form and expand on owners' statements for election or proxies.

- 1984 Act 184 granted owners the right to authorize the board to act on the owner's behalf.
- 1986 Act 279 provided for posting the notice of distribution and owners' rights to have a 100 word statement.

- 1989 Act 362 granted owners the right to split the proxy among the directors present at the meeting.
- Changes were considered by the Blue Ribbon Recodification Advisory Committee during the creation of Chapter 514B, owners' statements were expanded to one page, and the proxy form was changed so that naming the board of directors referenced directors present at the meeting instead of a majority of the directors.

History of subsequent proxy bills: A brief description of the history of the introduction of bills relating to proxies is provided. The proposal to limit or eliminate proxies has had a history of being presented and deferred in both the House and Senate.

2023 Rejection

HB377 contained wording to eliminate an owner's right to select a majority of directors present to vote on the owner's behalf. It was deferred by the House CPC on February 2, 2023.

2022 Rejection

HB1651 contained wording to eliminate an owner's right to select a majority of directors present to vote on the owner's behalf. It was deferred by the House CPC on February 3, 2022. The companion bill SB2815 was not heard.

2021 Rejection

HB221 proposed to reduce the rights to solicit proxies, even those for quorum purposes only.

The CPC issued a report that stated in part:

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

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

Your Committee has amended this measure by:

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

[Emphasis added.]

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

On February 3, 2021, the Senate Committee on Commerce and Consumer Protection deferred a similar bill (SB688). The same committee did not hold a hearing on the companion bill, SB61.

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

Previous Rejections

There have been similar proxy bills presented and never adopted in 2009 (HB2042 and SB499; HB2042 was not heard and SB499 was deferred February 24, 2009 by the Senate Committee on Commerce and Consumer Protection).

Robert's Rules of Order Newly Revised (12th ed.) (“Robert's Rules”):

Robert's Rules is a required parliamentary authority for the conduct of condominium and board meetings when the law and governing documents are silent. Robert's Rules 45:70 discourages the use of proxies in organizations where membership is “individual, in person, and nontransferable.”

45:70 states in part:

“Ordinarily [it] [proxies] should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable. **In a stock corporation, on the other hand, where the ownership is transferable, the voice and vote of the member also is transferable, by use of a proxy.** But in a nonstock corporation, where membership is usually on the same basis as in an unincorporated, voluntary association, voting by proxy should not be permitted unless the state's corporation law—as applying to nonstock corporations—absolutely requires it.”

Condominium ownership is transferable, there may be a significant financial interest in the property, and owners should have the choice to determine who represents them.

The elimination of an owner's choice to express confidence in the board of directors either as a whole or individually may have an unintended consequence of destroying a quorum for many meetings.

We are currently collecting statistics on the number of associations in the larger management companies who would not have had a quorum without this option for the owners. A final consequence of a no quorum could be the exact opposite of the desires of the bill's proponents. Boards will remain in office due to association meetings which fail to obtain a quorum.

B. DIRECT ELECTION; SPECIFIC REQUIREMENTS

The use of electronic voting is in its infancy in Hawaii. A few associations are responding to recent changes permitting owners to conduct meetings online or have electronic voting outside of a meeting.

It's patently obvious that the bill's lay supporters don't realize the unintended consequences of this bill.

The disclosure requirement leads to the implication that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS §514B-121(e). We are concerned that a management company or a board may use this wording to conduct an election that is not specifically authorized by their documents or the owners.

We recognize that HRS §514B-121 needs some clarification in the intermediate term. Several stakeholders are working on wording that will promote condominium participation and involved ownership through electronic meetings.

We ask the legislature to avoid this type of knee-jerk reaction.

Our position:

- The use of proxies has proved to be an important part of the association quorum and meeting process.
- An owner has equal rights to designate a board of directors in multiple ways or any other individual to represent the owner's interest.
- An owner may limit the proxy as the owner desires, pursuant to HRS §514B-123.
- An owner cannot be forced to turn in a proxy.

There is no valid reason presented for destroying this ownership right or micro-managing ownership meetings. All condominium associations in our experience provide for proxies in their governing documents.

This bill, if it becomes law, would invalidate or alter the proxy sections of almost 2,000 condominium associations representing at least 245,467 people in Hawaii who have relied on stable proxy legislation since the enactment of Chapter 514B.

We ask that the Committee defer or hold this bill.

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

Sincerely,

Steve Glanstein

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

HB-2067

Submitted on: 2/13/2024 7:23:14 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

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

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

H.B. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed

to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Mark McKellar

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

I OPPOSE H.B. 2067 for the following reasons:

Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

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Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Joseph R. Rocha

Alii Lana Condo Association Board

HB-2067

Submitted on: 2/13/2024 12:06:24 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Rachel Glanstein	AOAO Lakeview Sands	Oppose	Written Testimony Only

Comments:

Aloha,

I OPPOSE H.B. 2067 for the following reasons:

Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

If those two boxes are removed, my condominium association will not be able to get a quorum. I had to go around and beg owners to submit proxies, using any box, so that we would have a quorum the past few years. Some do check the quorum only box, which can make it difficult to complete our election, adoption of the tax rollover resolution, and approval of the managing agent contract, but at least half of those that submit proxies submit them to the board (about a quarter give them to me as an individual). Please don't get rid of the way that we are able to meet quorum requirements. If you pass this, you will have a number of owners complaining that their associations were unable to get a quorum at their annual meetings.

H.B. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e). This is going to be very confusing and may upset owners when they find out that they may not be able to participate electronically.

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Mahalo for your time,

Rachel Glanstein



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

We OPPOSE H.B. 2067 for the following reasons:

Condominium associations as with Planned Community Associations are legal entities that act by and through their boards of directors.

Condominium and Planned Community Association boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium and community projects. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

Limiting a proxy to only designation of a single individual or for quorum purposes only will only increase the possibility of proxies not being turned in or being deemed to be invalid or not usable in the event the designated individual does not attend the meeting, resulting associations not being able to meet their quorum requirements to conduct meetings of the association.

For the reasons stated herein we OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted on Behalf of the Waikoloa Village Association Board of Directors,


Roger E. Wehrsig
General Manager

**Hawaii
Legislative
Council
Members**

Joell Edwards
Wainiha Country
Market
Hanalei

Russell Ruderman
Island Naturals
Hilo/Kona

Dr. Andrew Johnson
Niko Niko Family
Dentistry
Honolulu

Robert H. Pahia
Hawaii Taro Farm
Wailuku

Maile Meyer
Na Mea Hawaii
Honolulu

Tina Wildberger
Kihei Ice
Kihei

L. Malu Shizue Miki
Abundant Life
Natural Foods
Hilo

Kim Coco Iwamoto
Enlightened Energy
Honolulu

Chamber of
Sustainable
Commerce
P.O. Box 22394
Honolulu, HI
96823



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

Wednesday, February 14, 2024
2:00 PM, Room 329 or Via Videoconference

RE: **HB2067** Limit Proxy Form - **Support**

Dear Chair Nakashima, Vice Chair Sayama & Committee Members,

The Chamber of Sustainable Commerce represents over 100 small businesses across the State that strive for a triple bottom line: people, planet and prosperity; we know Hawaii can strengthen its economy without hurting workers, consumers, communities or the environment.

This is why we support HB2067, which removes from the standard condominium proxy form the option of giving a proxy vote to the board of directors of a condominium association as a whole or to directors present at the meeting, and requires a disclosure statement on the standard condominium proxy form informing unit owners that an association may direct elections by electronic, machine, or mail voting.

This bill, if enacted, will improve the ability for condo owners to hold their elected board members accountable to acting in alignment with their fiduciary duties to the community of condo owners. Currently the way the proxy forms are used give too much default authority to the sitting officers of the board; whereby marginalizing condo owners who pay close attention to what the board is doing and make it easier for them to be out-numbered by those owners who are less invested in a high performing condo board.

Yours is the only House committee charged with protecting consumers. HB2067 demonstrates the legislature's ability to offer consumer protections to condo owners to ensure they have access to fair representation on their condo association boards.

HB-2067

Submitted on: 2/12/2024 1:14:37 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Joy Schoenecker	Individual	Oppose	Written Testimony Only

Comments:

BOD know more about who can contribute to the BOD than owners! Owners rarely come to a meeting and have no clue what each BOD has or has not contributed!!!

HB-2067

Submitted on: 2/12/2024 2:01:48 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Raelene Tenno	Individual	Support	Written Testimony Only

Comments:

Support for the removal of the "Board as a Whole" from the Proxy form.

HB-2067

Submitted on: 2/12/2024 3:34:32 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Greg Crawford	Individual	Support	Written Testimony Only

Comments:

Aloha Honorable Representatives,

I am in full support of HB2067. My property is currently experiencing a majority of 7 Board members who vote the same for every agenda item and keep each other on the Board by having homeowners submit their proxies to the Board so they can vote each other in office. We have tried year after year to vote them out with no success. Our finances are in terrible shape and my maintenance fee increased by \$500 in one year. Please pass this bill.

Mahalo

Committee on Consumer Protection & Commerce

Wednesday, February 14, 2024, @ 2:00 PM

HB 2067: Voting As A Whole

My name is Jeff Sadino, I am a condo owner in Makiki, and I **STRONGLY SUPPORT** this Bill.

“Voting As A Whole” strongly discourages participation in condo governance by individuals who are actually involved and knowledgeable about what is happening in their Association. I have sat at Association meetings and had other Owners tell me that there is no point in voting because their single vote gets steamrolled by the concentration of votes that the Board receives.

Voting As A Whole was created 20 years ago to solve the problem of concentration of proxies going to the Board President. The new problem is that there is now a concentration of proxies going to the Board. The problem of a concentration of proxies was never fixed, even though the trade industry tries to misdirect the attention away from the original problem.

There is a state-wide problem that participation in condo governance is in the single digits. The trade industry will oppose this Bill saying that all an Owner needs to do is to campaign and collect enough votes (i.e.: more than 50%) to win their campaign. But if there is only single-digit participation, this is not a realistic rationale for the opposition to use, and the trade industry knows this.

The trade industry will also oppose this Bill by saying that its supporters are not able to get elected to their Boards and so the individuals are trying to change the rules so they can get elected. This is garbage. To my understanding, I am the only person who supports this Bill who is not a present or former Board Member.

It must be obvious that Voting As A Whole has the potential to unfairly entrench incumbents and allow the Board to abuse this ability to elect their cronies to the Board instead of the person who is most qualified. This must be obvious.

Please get rid of the harmful Voting As A Whole. It never fixed the original problem that it was intended to fix and it instead has been abused by Boards to promote cronyism instead of good governance.

Thank you for the opportunity to testify,

Jeff Sadino

HB-2067

Submitted on: 2/12/2024 4:58:43 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kate Paine	Individual	Support	Written Testimony Only

Comments:

This needs passing if this committee is truly representing owners who need your support, You folks know from many testimonies and, conversely, non-support by those well-known in the "condo industry", that passing this bill is necessary building good governance.

HB2067

I strongly urge committee members to support HB 2067. It's important for condo associations to have free and fair elections and not let rogue board members control who is on the board by having the board majority distribute proxies to their sycophants. It's time to let the owners decide who they want on the board in order to stop the corruption, lying, harassment, retaliation, and bullying that occurs by rogue board members who act like dictators.

Respectfully submitted,

Wendy Taylor, PhD, RN, CNS

HB-2067

Submitted on: 2/12/2024 5:39:16 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacob Wiencek	Individual	Oppose	Written Testimony Only

Comments:

Aloha Representatives,

My name is Jacob Wiencek and I am a condo owner in Hawaii. I strongly oppose this legislation which inappropriately interferes with condo association governance and could create needless complications. Owners should be allowed the *option* to give their proxies to the Board if they so choose. Additionally, language in this legislation concerning vote by mail or electronic voting options is vague and will probably result in confusion regarding what potential new association responsibilities are imposed.

Electronic and mail in voting also have concerns of their own. Many associations don't have the technical capacity to handle electronic voting and any digital disruption could throw owners meetings and officer elections into doubt, resulting in expensive litigation. Mail in voting, while more secure deprives owners the ability to change their vote if new information is brought to light and sways their judgement.

I urge the committee to OPPOSE this legislation.

HB-2067

Submitted on: 2/12/2024 6:39:37 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

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

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

H.B. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed

to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

M. Anne Anderson

HB-2067

Submitted on: 2/12/2024 7:03:12 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
John Toalson	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

1. associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

1. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

John Toalson

HB-2067

Submitted on: 2/12/2024 7:22:15 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Julie Wassel	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

H.B. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

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For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Julie Wassel

HB-2067

Submitted on: 2/12/2024 7:42:54 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Edwina Spallone	Individual	Support	Written Testimony Only

Comments:

Aloha,

I support HB2067.

By giving proxies to the board as a whole, This silences voices of the minority directors, that have been out voted by the majority of directors. As every voice is important, this is an unconstitutional process.

Giving proxies to those directors present. Is just as unconstitutional. As possible corrupt board directors will keep voting themselves in, to continue to doing illegal activities. Many board members are not knowable to what is needed to maintain & manage a multimillion dollar property. Believing only what my board President tells them, & just because she is a lawyer the rest of the board directors believes her even when documentation is provided for inconsistencies in our finances.

Mahalo & God Bless,

Edwina Spallone

Pearl One Condo Owner

HB-2067

Submitted on: 2/12/2024 7:49:51 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Primrose	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

1. associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

1. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted

Primrose K. Leong-Nakamoto

HB-2067

Submitted on: 2/12/2024 7:51:42 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Leo Trombetta	Individual	Support	Written Testimony Only

Comments:

I strongly support BILL HB2067. I have personally witnessed abuse by Directors and Boards of Directors for condominium associations.

Condominium owners deserve fair and equal representation by their Board of Directors. All too often these Boards are run by people who seem to feel intimidation, bullying and retribution are acceptable. They are able to maintain their positions on Boards by stifling free speech and coercing owners to give their proxy to the Board.

Thank you,

Mike Trombetta

HB-2067

Submitted on: 2/12/2024 8:08:23 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

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

Comments:

Absolutely support this bill. I have seen misuse of the current proxy to Board of Directors, resulting in their constantly voting themselves back in to the detriment of sound governance for condominium homeowners. This is one bill that deserves priority in passage.

HB-2067

Submitted on: 2/12/2024 8:34:06 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Teresa Ahsing	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

H.B. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed

to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Teresa Ahsing

HB-2067

Submitted on: 2/13/2024 4:29:49 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
LuAnn Terrien	Individual	Support	Written Testimony Only

Comments:

I fully support HB2067

Testimony in Support of HB2067

Submitted for: Consumer Protection and Commerce (CPC) Committee Hearing, scheduled for Wednesday, February 14, 2024 at 2:00 PM

Aloha Chair Nakashima, Vice Chair Sayama, and members of the committee,

My name is Gregory Misakian, and I currently serve on three Boards in Hawaii:

- 1) Kokua Council, 2nd Vice President
- 2) Waikiki Neighborhood Board, Sub-District 2 Vice Chair
- 3) Keoni Ana AOA, Director

The Kokua Council, one of the oldest elder advocacy organizations in Hawaii, proposed four measures last year for better consumer protections for condominium owners, which were introduced as six bills (two which I co-authored, HB178 and HB1501). This year, Lila Mower (President of Kokua Council) and I drafted and proposed numerous additional measures, which were introduced as SB3204, SB3205, and SB3206 (and companion bills HB2701, HB2680, and HB2681).

The Waikiki Neighborhood Board, along with Ala Moana-Kakaako, McCully-Moiliili, and Makiki-Tantalus Neighborhood Boards, that have significant numbers of condominium associations in their communities, have adopted resolutions to support better consumer protection measures for condominium owners.

The Keoni Ana AOA, my condominium association where I am a frequent target for calling out misconduct by Board members and others, has the support of many owners who want to see better consumer protection measures.

The Public is concerned, engaged, and has been providing statements and testimonies to support the need for better laws and proper accountability and enforcement for bad acts by association Board members, management companies and their agents, attorneys, and others overseeing condominium associations and HOAs. I am a witness to this at many meetings I attend, and many discussions I have had one-on-one with concerned homeowners.

Abuse of Proxies

At my condominium association, the Keoni Ana AOA, the current Board President and other Board members have abused the use of proxies for years, enabling them to remain in power.

I live in one of the most mismanaged condominium properties in Hawaii, with extreme misconduct and abuse of power. Owners are not even notified how many open Board seats there are for our annual meeting, or encouraged to run for a seat on the Board.

On 2/9/24 SB2404 (a similar bill with additional election reforms) passed with amendments, and removed the option to give proxies to the “Board of Directors as a Whole,” but the option to give proxies to the “Directors Present at the Meeting” also needs to be removed, as it is a loophole for a majority Board who want to remain in power and control the association. There is absolutely no reason to allow a proxy to be given to anyone other than one trusted person if an owner can’t attend the annual meeting.

The real solution is to provide a ballot with candidates and association business to be voted on, and boxes to select who you want. It’s simple, it’s fair, and it’s the way we vote in America. And it’s done this way at condominium associations and HOAs throughout the United States.

What is Needed

There is a lot of public support to show the need for better laws, but the support that is needed to get anything accomplished begins with you. And each of you literally hold the future of over 1/3 of the population of Hawaii in your hands. You can choose to help the residents of Hawaii, or do nothing and let the insanity continue. And when I use the word “insanity,” it is not to embellish or grandstand, you simply need to read and watch the news, read and listen to the testimonies each year, and hopefully have taken the time to read and watch testimonies from the Condominium

Property Regime Task Force, where I have participated and provided testimonies (some of which I am including in my testimony here).

What is Not Needed

Our legislators need to be aware of the misinformation campaign, collusion, and conflict of interest, by many in opposition of better consumer protections for condominium owners.

Here are just some who oppose often and with disregard to the concerns and the facts, and some with conflict of interests that should disqualify testimony.

Richard Emery - Current Real Estate Commissioner & V.P. of Government Affairs for Associa Hawaii.

Richard Ekimoto - Attorney & CAI lobbyist, who sues condominium owners.

Philip Nerney - Condominium Property Regime Task Force Chair and Attorney who sues condominium owners often.

Mark McKellar - Attorney who sues condominium owners often in foreclosure cases.

Steve Glanstein - Parliamentarian (should be “unbiased” per his Code of Professional Responsibility).

Rachel Glanstein - Parliamentarian (should be “unbiased” per her Code of Professional Responsibility).

Anne Anderson - Attorney

Paul A. Ireland Koftinow - Attorney representing condominium associations.

Laurie Sokach - Management Company Representative

Numerous Association Board Presidents and Directors who want to retain their power and will do anything to do so, even providing our legislators with false information and a false narrative.

Many in this group are using **boilerplate cut and paste testimony** with misinformation, very strong language, derogatory comments towards the opposing side in favor of better laws, and without any regard for “individual” opinions. This form of testimony in my opinion is outrageous and should not be allowed, should be clear and obvious to our legislators, and at a minimum should not be considered in decision making.

News Headlines

Here are just a few Civil Beat headlines from 2023 and 2024, to further highlight how bad things are:

Slam The Brake On Runaway Legal Fees Charged By Condo Boards, January 26, 2024

Turkish Coffee Or Universal Khaki? Another Honolulu Condo Dispute Goes to Court, January 24, 2024

It Started With A Messy Front Porch. Now This Elderly Woman's Condo Association May Take Her Home, January 16, 2024

This Waianae Condo Development Has Lost Hundreds Of Thousands Of Dollars To Embezzlement, October 10, 2023

Prominent Honolulu Condo Directors Pay \$600,000 To Settle Retaliation Claim, July 13, 2023

Hawaii Property Management Giant Under Scrutiny - Records Indicate that Associa Hawaii has been operating with an inactive license. April 6, 2023

These headlines are not outliers of the issues happening every day, but are just the ones getting reported. Sadly, there are many more that you never hear about or read about, as homeowners, including many kupuna, are often afraid to fight back and speak out. They unfortunately have nowhere to turn, as you have not provided them with the proper State Office to assist them and ensure there are resolutions without repercussions from unethical Boards, Management Companies, and their representative attorneys (i.e., retaliation, harassment, unwarranted fines and assessments, improper legal actions, and foreclosures).

Violations of the Laws Our Legislature Enacts

My testimony and others are compelling, and at my association the misconduct and abuse of power is extreme and pervasive, and retaliation is regularly the result of my and others raising concerns. And, as I have previously testified at last year's Condominium Property Regime Task Force meetings, my condominium association is currently being led by a public official, who is a Corporation Counsel attorney for the City and County of Honolulu. Someone who should be upholding the laws of the State of Hawaii, is regularly violating them, most recently locking out my ability to unmute myself and speak at recent Keoni Ana AOA Board meetings via Zoom, a violation of Hawaii Revised Statute 514B-125, section (d).

SB2726 & HB1814 – Re. the Condominium Property Regime Task Force (Act 189)
(Good intentions, but too little, too late, and other reports are available.)

While I support SB2726 and HB1814 and their intentions, the urgency, severity, and frequency of issues impacting condominium owners throughout Hawaii warrants a more urgent and substantive response from our legislators, **and actions that will take effect in 2024.**

There is no more time to sit around waiting for reports that will only tell us what we already know (and previous reports have told us). The issues and concerns have gotten worse, more prevalent, and with impunity.

I advise all to read "An Issues Paper for the Hawaii Real Estate Commission," authored by Gregory K. Tanaka, Dated January 1991. The title/subject is, "Condominium Dispute Resolution: Philosophical Considerations and Structural Alternatives." I have forwarded a copy to the Chair, Vice Chair, and members of the Committee, prior to the submission of my testimony. Even back in 1991 it was clear that an Ombudsman was someone that could address the issues and concerns and be cost effective for everyone (reducing court cases and litigation). There are many other reports, and I am happy to forward more to you.

It was clear Hawaii needed an Ombudsman in 1991, and it's clear Hawaii needs one now. Hawaii also needs better laws for condominium owners and the time to act is

now, the time for reports was years ago. I urge you all to please listen to the Gregorlys ... Gregory Tanaka, and Gregory Misakian.

The residents of Hawaii simply want a place to go to get “enforcement,” of the very laws our legislators introduce, debate, and enact (within Hawaii Revised Statutes 514B and other statutes). The residents of Hawaii also want to be treated fairly, and not extorted for money by predatory Board members, predatory attorneys, and others.

Excerpts From Testimony I Submitted to the Condominium Property Regime Task Force (Act 189, 2023), for the Nov. 30th and Dec. 14th, 2023 Task Force meetings.

Testimony In Support of:

- 1) **Condominium Owner’s Rights.**
- 2) **The need for a State Ombudsman’s Office** to address owner complaints of misconduct and malfeasance by condominium Association Board members, Management Companies and their agents, Site Managers, Resident Managers, General Managers, Attorneys, and others. And to address complaints owners have regarding the Department of Commerce and Consumer Affairs, the Regulated Complaints Industry Office, and others who engage in any improper acts or actions, fail to take complaints, or fail to address concerns or administer proper investigations with fair and equitable resolutions. And to require proper enforcement actions and accountability for misconduct by Board members, Management Companies and their Agents, and others.
- 3) **The need for HRS 514B reforms**, including in the areas of voting rights, Board member qualifications, education and training, Community Manager licensing and/or certification, and numerous other areas identified via the Task Force and past legislative testimony for condominium related bills (and future testimony).
- 4) **The need for a two-sided communication flow of “accurate” information to condominium owners**, and not a one-sided viewpoint tainted with conflict of interest (i.e., with all of the messaging coming from the condominium trade

industry and attorneys who represent Management Companies and Association Boards).

As I previously stated in my October 27th testimony:

I am dealing with serious misconduct at my condominium association, and the number of issues and concerns and the abuse of power is literally overwhelming.

I summarized some of the issues and concerns in my previous testimony, but there are many more, and recently the abuse of power and misconduct from our Board President has gotten much worse. Below are just some of the things that happened at the most recent Keoni Ana AOA Board meeting on November 20, 2023.

- 1) The meeting notice/agenda was never sent to owners via TownSQ/Email, so many owners who do not live in the building were not aware of the Board meeting. Our Board President posted a TownSQ notice at 5:20 PM, just 25 minutes prior to the meeting, and with the wrong start time (6:00 PM noticed, vs, 5:45 PM when the Owner's Forum began). Our Board President has chosen to not properly notice Board meetings, and is disenfranchising the owners from participating in the meetings and in the Owner's Forum.
- 2) The Board President, Daniel Jacob (an attorney and public employee who works for the City and County of Honolulu, Corporation Counsel), took control of the Zoom meeting by locking the option to "unmute." When the first item on the agenda came up, I could not unmute myself to speak and raise an objection to adopt the agenda (as I wanted to motion to add items to the agenda). I also raised my hand and was not recognized. This is a serious abuse of power and is unlawful, and is also retaliation in violation of HRS 514B-191. When I was finally able to speak to give my Treasurers report and raised concerns about what was done, and ask Mr. Jacob to stop muting me, he ignored my concerns, was argumentative, and said he can do whatever he wants. He continued to mute me numerous times when I was speaking or trying to speak during the meeting. He also did this in Executive Session. To highlight just one example and reason why a State Ombudsman is needed, this is it. This is a violation of HRS 514B-125 (seen further below, with the section highlighted). And to address this one issue alone, do I have to file for a mediation, and then litigate

this in court? And how long does the Task Force think this issue might take to resolve? And at what cost financially?

- 3) The meeting agenda was not followed (the Board President skipped agenda items without stating he was doing so, and numerous agenda items were not discussed).
- 4) The Board Packet for the meeting was missing a great deal of information needed for decision making and voting. It was missing previous meeting minutes (regular board meeting and the executive session). Also missing were bids and proposals needed for decision making. In one example no bids/proposals were included for a structural engineering firm and only one proposal was verbally mentioned for a vote. I requested that the vote not be taken, as the Board had no written proposal to review, in addition to not having multiple bids/proposals (and it was verbally stated there was a second one). Our Board President still motioned for a vote and the Board majority approved the engineering firm. I am aware of other misconduct related to this and concerns of kickbacks and other improper actions.
- 5) I motioned for a Budget Committee to be formed (something I had been trying to get the Board to act on since the late summer with no success). I received no 2nd from any other Board member. The Board was already non-compliant to our governing documents regarding the budget, and Associa Hawaii had misinformed the owners regarding the Board meeting to discuss the budget (via a USPS mailing they sent). Later in the meeting our Board President motioned to form a Budget Committee (the very thing I motioned for with no 2nd). He included names of Board members and said owners could also be part of the Committee. I, the Treasurer of the Association, was excluded from the Committee. The level of retaliation I have received, both as an owner and now as a Board member, is something that no homeowner should ever have to experience.

§514B-125 Board meetings.

(d) All board meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. **Unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all**

directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear

Excerpts From ThinkTech Hawaii, Condo Insider, where condominium owners are not invited to express their concerns and opinions.

There is numerous misinformation and one-sided discussions seen at the many ThinkTech Hawaii Condo Insider videos hosted by those from the condominium trade industry. Some of the most glaring and concerning statements were at the Condo Insider episode dated August 21, 2023, titled “New Act 189 Re Condos and HOAs,” which was hosted by Ms. Jane Sugimura, who is an attorney seen at the Hawaii State Bar Association website as Yuriko J. Sugimura.

At timestamp 19:28, Ms. Sugimura misstates Colonel Mark Brown’s case as settling before going to trial, which was not true, as this case settled during trial.

At timestamp 21:39, Ms. Sugimura quotes how many mediations there were in a period that was reported by the Real Estate Commission, and states 50% were mediated to some resolution (even though they are confidential, and you can never know if they were truly resolved or successful). What she reported also does not agree with data I have seen.

At timestamp 22:20, Ms. Sugimura makes a glaring and concerning statement, that the cases that didn’t settle at mediation didn’t go forward to litigation because the owners didn’t have good cases. As she could never know the details about the mediations or the cases, she could never make this statement. From the many discussions I have had with owners who have concerns and attempted to mediate or did mediate, many could not afford to go forward with litigation, or were concerned with the risks, including the lengthy process, and possibly having to pay the other sides attorney costs if they don’t win their cases.

At timestamp 23:03, Ms. Sugimura says:

“But the good thing that came out of that is, the ones that didn’t complete the mediation didn’t go any further, so it ended, and I think that’s what everybody wants.”

My first thought was, “did she just say that on the record.” I think the gravity of this statement is clear.

She further elaborates, providing more of her “opinion” with no facts and the opposite of what is generally known (with evidence to support).

She also goes on to directly contradict herself regarding mediations ending without lawsuits and saying there aren’t many lawsuits, then goes on to say how the judges are scolding her, and there are so many condominium lawsuits.

Continuing from timestamp 25:20, at timestamp 25:33, Ms. Sugimura says the most glaring and concerning statements, *“The judges, let me tell you, the judges get, don’t like the cases, they, they hate both sides, don’t think you’re going to get a sympathetic judge. The minute the judge finds out it’s a condo dispute, I mean, I don’t know what happens, the horns go up. All of a sudden, they want to rush you off to mediation or arbitration, but anyway, they want you off their docket, they don’t want you in their court room, because they think the disputes are stupid and petty. And they don’t understand why you have to take up public time and money, to, to have some third party resolve your dispute, you know, for you.”*

If what Ms. Sugimura states is true, that “the Judges want you off their docket” and “the Judges think the disputes are stupid and petty,” then we have a Judiciary problem, if it’s not true, we have an attorney problem. Either way we have a problem, and Ms. Sugimura’s public statements and misinformation, which are made often, whether in ThinkTech Hawaii Condo Insider videos for the condo trade industry, or in public testimony at the legislature, are of serious concern.

Self-Governed (A term loosely and incorrectly applied.)
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Saying something over and over that is not true will not simply make it true, but this has been the case and continues to be the case with many, including our legislators (who continue to use the term self-governed to define condominium associations). When State legislators enact laws that apply to condominium associations, the “Self” just became the “State” (i.e., State-Governed). But in reality, it’s a bit of both and is

more of a Hybrid-Governed society ... until it's not and devolves into a Board/Abuse of Power-Governed society, which seems to be the case more and more across Hawaii, and at my condominium association, the Keoni Ana AOA.

I ask you to please pass HB2607 and help over 1/3 of the population of Hawaii, by amending a statute that is being abused frequently by rouge Board members and bad actors.

Mahalo,

Gregory Misakian

HB-2067

Submitted on: 2/13/2024 5:22:41 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

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

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the "board as a whole," or to "those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage" because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association's board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

H.B. 2067 also appears to require that all standard proxy forms include a "disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting." A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed

to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I **OPPOSE** H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Lance Fujisaki

HB-2067

Submitted on: 2/13/2024 7:38:20 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Joe M Taylor	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

1. associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

1. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted

Joe Taylor

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

I OPPOSE H.B. 2067:

Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their directors. For those owners who do not have confidence in their association's board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. Many associations have a hard time engaging the membership to participate in the association's governance. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

H.B. 2067 also appears to require that all standard proxy forms include a "disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting." This could be confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when actually electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Additionally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully,

Pamela J. Schell

**House of Representatives
Thirty Second Legislature
Committee on Consumer Protection and Commerce
Wednesday, February 14, 2024
2:00 p.m.**

To: Chair Representative Mark M. Nakashima
Re: HB 2067, Relating to Condominiums

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

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups with over 800 members and affiliates in Hawaii and I serve on the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 retirees.

I also serve as the leader of a coalition of hundreds of property owners, mostly seniors, who own and/or reside in associations throughout Hawaii and I have served as an officer on three condominium associations' boards.

I strongly support HB 2067.

The DCCA states, "the owners' most important role is electing directors,"¹ even more consequential than paying association fees or following association rules.

States with larger numbers of homeowners' associations, like Florida² and Illinois³ prohibit the use of proxy voting for the election of directors because of the potential for election fraud, and mandate ballot voting.

In Hawaii, the authorized proxy forms provided by property management companies are "general" proxies that may lead owners to feel that they are represented but allow the proxy assignee to vote however the assignee wants, unlike "directed" proxies that instruct the assignee how to vote. This negates proxy-proponents' claims of "free choice."

The options to assign owners' proxies to the board confers greater voting power to the board, allowing them to repeatedly vote themselves into office while depriving and defeating candidates who may have garnered even more individual owners' votes than these incumbent directors.

Proponents of the continued use of proxies insist that proxies are needed to offset the apathy of owners but reveal their preference for disengaged and absent owners as this detachment makes management

¹ Real Estate Commission, Department of Commerce and Consumer Affairs, *Condominium Property Regimes: Owner Rights and Responsibilities Based Upon the Hawaii Revised Statutes as of July 15, 2009*:

"In general, the "self-governance principles" under which a condominium association operates requires board members and owners to understand that: (1) the owners' most important rule is electing directors..."

² Florida 718.112(2)(b)(2), http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0718/Sections/0718.112.html

³ Illinois 765 ILCS 160/1-25(i), <https://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=3273&ChapterID=62&SeqStart=100000&SeqEnd=1850000>

and counsel's relationships with directors less scrutable.

Contrary to proxy-proponents' assertions, the re-election of incumbent directors, regardless of sizeable dissent from owners, convince owners that these incumbents are entrenched and inexorable, sometimes maintaining their seats for decades, which inevitably generates greater owner-apathy because their votes have little consequence.

Additionally, proxies are often improperly solicited from owners advised to assign their proxies to the board by association and management employees whose livelihoods appear to depend on the incumbents seeking reelection.

In 2020, Hawaii's Office of Elections reported that the mail-in ballot response was a record-breaking 95.11% of overall voter turnout.⁴

In 2022, Hawaii's Office of Elections reported that the mail-in ballot turnout was a record-breaking 96.02% of overall voter turnout.⁵

A similar direct-voting-by-ballot method, by postal mail and electronic mail, with an auditable document trail, would benefit, engage, and empower more condominium homeowners and would obviate the need for proxy assignments. The mail-in ballot process allows more owners across the world to directly participate in their associations' meetings.

Mahalo for the opportunity to testify on support of HB 2067.

⁴<https://files.hawaii.gov/elections/files/results/2020/general/histatewide.pdf>

⁵<https://elections.hawaii.gov/wp-content/results/histatewide.pdf>

HB-2067

Submitted on: 2/13/2024 8:28:34 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Christina Marumoto	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

1. associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

1. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Christina Marumoto

HB-2067

Submitted on: 2/13/2024 8:31:44 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Paul A. Ireland Koftinow	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

H.B. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed

to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein, I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Paul A. Ireland Kofitnow

HB-2067

Submitted on: 2/13/2024 8:46:05 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laurie Sokach	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

H.B. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed

to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Laurie Sokach AMS, PCAM

Community Portfolio Manager

HB-2067

Submitted on: 2/13/2024 8:47:32 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Christy Hinds	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

1. associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

1. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Christy Hinds

HB-2067

Submitted on: 2/13/2024 8:49:36 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

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

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

H.B. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed

to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Laura Bearden

HB-2067

Submitted on: 2/13/2024 8:53:00 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
DENNIS MCCOOLA	Individual	Support	Written Testimony Only

Comments:

Dear Committee Chair:

In the interest of free and fair elections, my testimony is in support of removing the option of giving a proxy vote to the board of directors "as a whole." I am the Vice President on the board of directors at my condo where I own and live in and have seen the "board as a whole" option used repeatedly to the disadvantage of owner-occupants by an unpopular board in power to remain in power by voting themselves back in on "board as a whole" proxies without sufficient votes from owner-occupants present or owners who designated other owners to vote their proxies. The "board as a whole" means that a majority group of board members can select a slate of directors, usually incumbents or hand-picked appointees, despite the fact that many owners present did not vote for them and do not want them on the board. Most absentee owners and managing real estate agents simply check the "board as a whole" box which is the first choice, and mail it in. This allows entrenched and unresponsive board members to remain in power. On a nine member board, the board as a whole means a 5 to 4 majority of board members vote all the proxies given to the board as a whole, and the voices of 4 directors and the people they represent are silenced. This is no good. Let the condo owners who take the time to attend board elections and show interest in their condo affairs decide, and do so with the help of their neighbors who designate them via proxy to freely vote for the directors of their choice. I support HB 2067 and hope to see it become law with your help.

Mahalo,

DENNIS MCCOOLA

HB-2067

Submitted on: 2/13/2024 8:54:12 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
marg knight	Individual	Support	Written Testimony Only

Comments:

I strongly support HB 2067

This is a needed change to help

condo associations to have fair elections.

I have witnessed how owners (directors) can **keep**

their control of the Board (majority) by giving all the proxies that were sent in to the "BOARD AS A WHOLE" to their

"buddies",and secure their majority of the Board.

They campaigned for owners to give their proxies to " the board as a whole".

OUTRAGEOUS.

Thank You,

HB-2067

Submitted on: 2/13/2024 9:10:31 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Patricia Bilyk	Individual	Support	Written Testimony Only

Comments:

I support HB2067

Patricia Bilyk

HB-2067

Submitted on: 2/13/2024 9:12:26 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dawn Smith	Individual	Support	Written Testimony Only

Comments:

It is time to quell the ability of a condo board to keep on electing and re-electing themselves. Hopefully condo boards will soon be run like democratic elections where each valid owner can vote either in person or by ballot for candidates. Currently owners who cannot attend the annual meeting are urged to give their proxy (vote) to "the board". Generally one or two directors control the board, which means they control the records. This creates a "play along" situation. The reason for multiple board members is to keep a balance of power. Having a "play-along" board defeats the purpose. Power corrupts, absolute power corrupts absolutely.

HB-2067

Submitted on: 2/13/2024 9:52:19 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Maile Fuchshuber	Individual	Support	Written Testimony Only

Comments:

I support this bill because there needs to be more transparency around voting within an AOA, access to other voting methods, and the different methods made easily available. Voting should be a responsibility taken seriously by all owners, and not just given away to a board proxy for them to decide, especially when they are able to reelect themselves onto the board year after year.

HB-2067

Submitted on: 2/13/2024 9:52:34 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
bev harbin	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

1. associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

1. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Bev Harbin

Board Member

Wahiawa Medical Building

HB-2067

Submitted on: 2/13/2024 10:31:14 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Paul B Buist	Individual	Support	Written Testimony Only

Comments:

I support this bill as too many boards are hoarding proxy votes giving them in unfair advantage over other owners.

Pegi L. Braun
217 Prospect Street C14
Honolulu, Hawaii 96813
(808) 286-1052

Aloha,

I write in support of HB 2067 – removing the proxy vote of owners going to “the Board. I ask, no I BEG you to pass this Bill.

I live in a condo consisting of 107 units. I have been here for 26 years. Our Associate’s finances are currently in dismal shape and have been for the last few years that the current Board has been running the show. Many absentee owners that are renting their units usually pay no attention to Board meetings, and usually just give their proxy for the elections held at the Annual meeting to the Board. However, by this being doing, our AOA has seen a drastic increase (20%) in maintenance fees, as well as a very large assessment for increased insurance costs (\$433 per month for myself as I have a 3-bedroom condo) and we are still obligated on a \$2 million dollar loan that was taken out 2+ years ago. The Board has spent money much too freely, much of which could have probably been done at lesser prices, have not gotten 3 bids for projects, and have not been transparent with owners when they are questioned about our money and where it is going – and why. We MUST be able to replace these free-spending Board members.

We need to make condo owners responsible to VOTE for responsible Board members, not give their proxy to the Board because things will not change for the better. If our AOA was my personal business I would be filing bankruptcy.

PLEASE PROTECT CONDO OWNERS SO WE ARE NOT “PRICED OUT OF PARADISE” TOO.

THANK YOU VERY MUCH !!!

/S/Pegi L. Braun

HB-2067

Submitted on: 2/13/2024 10:56:42 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

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

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

H.B. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Mary Freeman,

Ewa Beach

HB-2067

Submitted on: 2/13/2024 11:22:36 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Patricia Yoneyama	Individual	Support	Written Testimony Only

Comments:

I strongly support and encourage HB2067 be categorized HIGH PRIORITY.

It is unacceptable and inappropriate for owners to live in a hostile environment and forced to retain legal services.

LAW OFFICES OF PHILIP S. NERNEY, LLLC

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

February 13, 2024

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

Re: **HB 2067 OPPOSE**

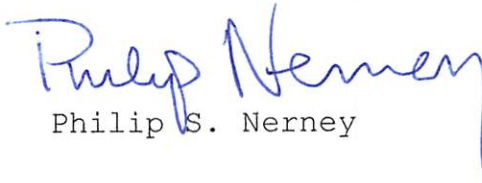
Dear Chair Nakashima, Vice Chair Sayama and Committee Members:

HB 2067 should be deferred because there is no good reason to deprive owners of the opportunity to express support for and confidence in a board of directors by assigning a proxy to the board. Also, HB 2067 would *create* a problem rather than *solve* a problem.

The problem HB 2067 would create is the concentration of power in individuals who aggressively solicit proxies. Existing law guards against that potential.

Perennial attacks on proxies simply reflect the desire of activists holding minority views to seize control of condominium boards. Condominium owners who are satisfied with incumbent governance should be allowed to assign their proxy to boards, as allowed by existing law.

Very truly yours,


Philip S. Nerney

HB-2067

Submitted on: 2/13/2024 11:31:18 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Oppose	Remotely Via Zoom

Comments:

I am an owner occupant and board member of a high rise condo in Downtown Honolulu. I STRONGLY OPPOSE HB2067 for the following reasons.

This bill could well destroy condos, as we know them. For 35 years, in one instance, and 40 in the other, the two choices you want to remove from proxy statements have been law. They are used by many owners, those who live on site and the absentee owners. Without them, we could not get quorum for the annual meetings. The owners trust their board members. They do not know other members of the community. They know a face, but cannot put a name to the face. They do however know the dogs and their names. Unfortunately the dogs cannot vote. If they want to give their proxy to named persons, in most instances they have no other viable option. They do not know the names of the individual board members. They are not going to give a proxy to a stranger, who may not even attend the meeting.

A small, vocal group, we all know who they are, has been trying to get this change for several years. If they finally get their way, they will not be happy with what they wished for. An unintended consequence of this proposal will be lack of quorum which will lead to no meeting and the incumbent board members retaining their positions for another year. And, if there is no quorum then the members will continue to remain in office.

In 2023, my condo received 213 proxies, representing 53% of the ownership. Once owners arrived and their proxies were revoked, we had a total of 55.739% in person or by proxy. Of those, 60 proxies were for the board as a whole, representing 15% of the owners, 33 proxies were split among the board members, representing 8.4% of the owners. That is a total of 23.4% of the owners. Without those two categories we would not have had quorum. Without quorum there is no meeting, without a meeting the IRS rollover resolution cannot be passed, management company contracts cannot be voted on, and items members in attendance want to bring up, cannot be heard. The consequences are dire. To get rid of these two options will be destabilizing.

At last year's annual meeting we were filling three positions and had six candidates, several of whom were nominated by owners at the meeting. We also, for the first time, had directed proxies, where the owners was able to tell the proxy who to vote for and that had to be followed. One of the candidates was elected due to that option as a good number of owners had instructed the proxy holder to vote for him.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing for the board, as an entity, to act as their proxy at association meetings. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

Proxies are used by many organizations and have been for years. I am quoting from a proxy form for a publicly traded company. "As the record holder for your shares, we will vote your shares based on your instructions.

"Please provide us with your voting instructions before the meeting. If you do not provide us with your voting instructions we may vote your shares at our discretion on those proposals we are permitted to vote on by New York Stock Exchange rules.

"If you sign and return this form, we will vote any unmarked items based on the board's recommendations

"If your securities are held by a bank, your securities cannot be voted without your specific instructions."

It should be noted that the proxy holder shall have the authority to vote on such other business as may properly come before the meeting or and adjournment thereof.

Please defer this bill.

lynne matusow

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

THIRTY-SECOND LEGISLATURE
Regular Session of 2024

Wednesday, February 14, 2024
2:00 P.M.

**TESTIMONY ON HOUSE BILL NO. 2067, RELATING TO
CONDOMINIUMS.**

To the Honorable Mark Nakashima, Chair, and Members of the Committee,

I **STRONGLY SUPPORT** House Bill No. 2067 which will finally allow homeowners to exercise their basic legal rights instead of abdicating control of their vote to a proxy.

As you know, although a proxy may tell a homeowner that they will honor said homeowner's election choice, in reality, the proxy has no legal obligation to uphold this promise. Once a condominium board or director has your proxy vote, they can do whatever they want; they can even vote against your best interest.

Here, in this very legislature, our representatives continue to safeguard their constituents' rights as seen with the standardization of video conferencing, automatic mailing of ballots, and Zoom testimony.

Why should these safeguards granted to all citizens of Hawai'i stop once a homeowner falls under the purview of a condominium board?

Please, Chair Mark Nakashima, I humbly request that you and your fellow CPC Committee Members extend these basic democratic protections to condominium owners by passing HB2067.

Much appreciation,
Sarah K. Worth

HB-2067

Submitted on: 2/13/2024 11:38:40 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sandie Wong	Individual	Oppose	In Person

Comments:

As a condo owner and resident, I strongly oppose HB2067. Many owners are not familiar with who is running for the Board, so they defer to the Board members to cast their ballot. Some folks may not like this, but I think each individual owner should have the right to give their proxy to whoever they wish, including to the Board if they wish. I do not understand the purpose to the 2nd portion of this bill. Usually, elections for the Board occur at the Annual meeting. Thus, I request that you defer this bill. Thank you.

HB-2067

Submitted on: 2/13/2024 11:41:34 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lina Taira	Individual	Support	Written Testimony Only

Comments:

Our current board needs to be stopped from pushing out legit concerned owners who want to make a difference. They take advantage of the current process to manipulate votes to bring in other cronies who are puppets to keep their power. HB2067 will help concerned owners to have a fighting chance to get on the board. Please make the process for voting new board members in with procies fairer for owners.

Thank you

HB-2067

Submitted on: 2/13/2024 12:02:09 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ronald Hora	Individual	Support	Written Testimony Only

Comments:

I support this bill which will allow the will of the owners to be properly served when a vote is required on any issue.

Dale Arthur Head

1637 Ala Mahina Pl. Honolulu, HI 96719

Tuesday 12 February 2024 sunnymakaha@yahoo.com

To: CPC Chair Mark M. Nakashima, Vice Chair Jackson D. Sayama, Terez Amato, Della Au Bulatti, Cedric Asuega Gates, Natalia Hussey-Burdick, Nicole E. Lowen, Richard H.K. Ohishi, and, Elijah Pierick

Regarding HB2067: Removes from the standard condominium proxy form the option of giving a proxy vote to the board of directors of a condominium association as a whole or to directors present at the meeting. Requires a disclosure statement on the standard condominium proxy form informing unit owners that an association may direct elections by electronic, machine, or mail voting.

1. *I have been coming down to our Capitol region since **2016** seeking to get fair play and voting rights for Home Owners Association (HOA) members put into our statute, so, I do strongly **SUPPORT** HB2067.*
2. *After residing in a Waianae condominium complex for **34** years and **10** months, I sold it in September of 2021 due to unstoppable corruption perpetrated by three different property management companies. This took the form of manipulating proxies in order to hijack, Board of Directors elections, in order to keep that Board 'stacked' with people of the Managing Agent's choice, which thwarted owners trust in the companies. For me to ferret out this information it was only possible by conducting two forensic examinations of proxies, on a post-election basis, revealing how they were secretly assigned by the company employee without a proper 'Motion' having been made and shown on either the **Election Certificate** or recorded in the Official Minutes. Once a 'stacked' Board, friendly to the manager is created, there is little to no chance of there being solicitation of bids from other firms by the HOA. This stunt, a 'business model', is not uncommon, and illustrates 'why' proxies are beloved by the 'industry' of management companies. It is about preserving and enhancing profits, which is done though huge fees increases as those almost always exceed inflation and social security hikes. This powers up the cost of living and housing which does not get any coverage by the media. This in turn reams taxpayers who are tasked to fund new 'affordable housing' projects.*
3. *Developers write ByLaws which they then impose on buyers of their properties. They also form the Associations which the state regards as 'self governing'. Our HRS514b, generally, is not enforced by the state, and its Executive Branch has a Department of Commerce and Consumers Affairs (DCCA) which contains within it a Real Estate Commission (REC) and Regulated Industries Complaint Office (RICO), which does not in regulate or investigate privately owned management companies. It does however issue licenses to the companies to do business. To its credit, **REC** had*

opposed, decades ago, altering the Proxy form by including the 'option' for an HOA member to assign their vote(s) to the Board with this warning, **"We question if the amendment will provide for more abuse on the use of proxies and whether a new set of problems will appear, such as a new type of proxies and/or more challenges to proxies"**. (Note - HOA voting rights advocate Ms. Lourdes Scheibert located this info in the state archive). The purpose for this apparently was to provide an administrative tool for managers of 'elections' to have full opportunity to bestow votes on candidates of their choosing, which often happens. And, when this is combined with 'Cumulative Voting', a multiplier of voting power, the result is too often injurious to the HOA membership. It constitutes 'theft of services' by the company.

4. A good rhetorical question to ponder is, 'What level of corruption is acceptable'? Consider, as RICO has been made aware of this problem a few times in the past, and done nothing other than point finger at the Legislature for not authorizing them to do something, It is appropriate to pass this Bill and strip those two Boxes 'for the Board' as they do not promote democracy. Those who oppose doing so are apparently against normal voting rights for HOA members, who happen to be taxpayers.

5. Please pass HB2067.

Respectfully, **Dale Arthur Head** Tuesday 12 February 2024

PS - Enclosures to review

- 1 HOA 'conditional voting' (HRS514b-123)
- 2 2018 EC (Election Certificate) Omits info that 101 proxies were given to 2 people.
- 3 2019 EC Omits that fellow with 49% of votes had only one proxy from an owner.
- 4 Letter to Hawaiian Properties, President Dass Ramadass, regarding proxy abuse.
- 5 Fraud (Embezzlement against Makaha Surfside HOA). Civil Beat expose article.
- 6 Letter to Makaha Surfside owners about embezzlement dated 9-19-2023.
- 7 Redacted letter from REC Commissioner denouncing HOA voting rights as 'horrible'.
- 8 RICO Director Esther Brown declaring HOA voting a 'private' matter.
- 9 Pic of Dale Head with Voter Suppression banner at Capitol

§514B-123 Association meetings; voting; proxies. (a) **If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit.** If

more than one of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration or bylaws expressly provide otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being made by any of the other owners of the unit to the person presiding over the meeting before the polls are closed.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. A unit owner may vote by mail or electronic transmission through a duly executed proxy. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. In the absence of protest, any owner may cast the votes allocated to the unit by proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary of the association or the managing agent. A proxy is void if it purports to be revocable without notice.

(c) No votes allocated to a unit owned by the association may be cast for the election or reelection of directors; provided that, notwithstanding section 514B-106(b) or any provision in an association's declaration or bylaws to the contrary, in a mixed-use project containing units for residential and nonresidential use, where the board is comprised of directors elected by owners of residential units and directors elected by owners of nonresidential units, the association, acting by and through its board, may cast the vote or votes allocated to any nonresidential unit owned by the association in any election of one or more directors where those eligible to vote in the election are limited to owners of one or more nonresidential units, which includes the nonresidential unit owned by the association.

(d) A proxy, to be valid, shall:

- (1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. Hawaii-Aleutian Standard Time on the second business day prior to the date of the meeting to which it pertains; and
- (2) Contain at least the name of the association, the date

of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given.

(e) If a proxy is a standard proxy form authorized by the association, the proxy shall comply with the following additional requirements:

- (1) The proxy shall contain boxes wherein the owner may indicate that the proxy is given:
 - (A) For quorum purposes only;
 - (B) To the individual whose name is printed on a line next to this box;
 - (C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or
 - (D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage;provided that if the proxy is returned with no box or more than one of the boxes in subparagraphs (A) through (D) checked, the proxy shall be counted for quorum purposes only; and
- (2) The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section 514B-150.

(f) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the unit owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

(g) A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

(h) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit.

(i) With respect to the use of association funds to distribute proxies:

- (1) Any board that intends to use association funds to distribute proxies, including the standard proxy form referred to in subsection (e), shall first

post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days before its distribution of proxies. If the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:

- (A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or
- (B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement, which shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page, indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies; and

- (2) A board or member of the board may use association funds to solicit proxies as part of the distribution of proxies. If a member of the board, as an individual, seeks to solicit proxies using association funds, the board member shall proceed as a unit owner under paragraph (1).

(j) No managing agent or resident manager, or their employees, shall solicit, for use by the managing agent or resident manager, any proxies from any unit owner of the association that retains the managing agent or employs the resident manager, nor shall the managing agent or resident manager cast any proxy vote at any association meeting except for the purpose of establishing a quorum.

(k) No board shall adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters on the common elements by unit owners; provided that a board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §20; am L 2017, c 71, §4 and c 73, §2; am L 2022, c 62, §6]

PM: Albert Denys Jr.
AA: Jea Tumamao

ASSOCIATION OF APARTMENT OWNERS

NOTES (Voting Purposes Only): Cumulative Voting Allowed; > voting quorum to elected to the board;

Makaha Surfside
Annual Meeting

Monday, March 05, 2018

Certificate of Election

NOMINEES	VOTES RECEIVED	TERMS
James V. Hopkins	59,97729	2020
Stephen M. Turner	55,405771	2020
William "Bill" Lazu	23,514143	2020
Dr. Richard Scheffer PhD, LAc	18,176186	2020
Dale Head	15,919429	Not elected
Pamela E. Biece	12,8365	not elected
Vorotnikov Viatcheslav	12,192343	not elected

Final Quorum:	65,16605			
Votes Eligible to be Cast:	50,3990	x	4	= 201,5960
<small>(Final Quorum - Quorum Only = Voting Quorum)</small>	<small>Voting Quorum</small>		<small># of positions available</small>	
Number of Votes Cast:	198,0221			
Percent to be Elected:	50,3990	/	2	= 25,1995
	<small>VOTING Quorum</small>		<small>DO NOT Change</small>	<small>IF Applicable</small>
	65,16605	/	2	= 32,5832
	<small>FINAL Quorum</small>		<small>DO NOT Change</small>	<small>IF Applicable</small>

Tellers' Certification: We certify that we inspected the counting of the votes and the results were as indicated above. We further certify that all results were reported to the membership at the meeting.

Teller 1 Signature: Robin Hermance Unit/Lot: C 245
 Teller 2 Signature: [Signature] Unit/Lot: A 224
 Teller 3 Signature: [Signature] Unit/Lot: A 026
 Teller 4 Signature: _____ Unit/Lot: _____

WE, the undersigned, hereby certify that we have inspected the ballots, inspected the voting process, and that the results of the election were as listed.

Chair's Certification: I certify that the above results were read to the membership at the meeting by one of the Tellers listed above and by the Chair:

Chair's Signature: [Signature]
(Required)

Votes NOT Counted	Reason	Comments
2	Election Ballot incorrect #	

PM: Russell Doane
 AA: Joahanna dela Cerna

**Association of Apartment Owners
 Makaha Surfside
 Annual Meeting
 Wednesday, March 06, 2019
 Certificate of Election**

NOTES (Voting Purposes Only): Cumulative
 Voting Allowed; > voting quorum to elected to
 the board;

NOMINEES	VOTES RECEIVED	TERMS
Tim O'Donnell	49.581814	2021
Dale A. Head	48.8954	2021
George L. Logan	31.083214	2021
Jowena M Moffis	20.479071	
Dean Hashida	1.9669	
Robert Aki	0.4166	
Truman Lee Ketchmark	.2209	

Final Quorum:	59.2474				
Votes Eligible to be Cast: <small>(Final Quorum - Quorum Only = Voting Quorum)</small>	50.8813 x	3	=	152.64390	
Number of Votes Cast:	152.64390				
Percent to be Elected:	50.88130 /	2	=	IF Applicable	
	VOTING Quorum	DO NOT Change			
	59.2474 /	2	=	IF Applicable	
	FINAL Quorum	DO NOT Change			

Tellers' Certification: We certify that we inspected the counting of the votes and the results were as indicated above. We further certify that all results were reported to the membership at the meeting.

Teller 1 Signature: Robin L. Hermance Unit/Lot: C245
 Teller 2 Signature: Patricia J. Mangano Unit/Lot: A243
 Teller 3 Signature: _____ Unit/Lot: _____
 Teller 4 Signature: _____ Unit/Lot: _____

WE, the undersigned, hereby certify that we have inspected the ballots, inspected the voting process, and that the results of the election were as listed.

Chair's Certification: I certify that the above results were read to the membership at the meeting by one of the tellers listed above and by the Chair.

Chair's Signature: [Signature]
 (Required)

Votes NOT Counted	Reason	Comments

On Saturday, January 26, 2019, 5:06 PM, sunnymakaha@yahoo.com
<sunnymakaha@yahoo.com> wrote:

President Dass Ramadass
Hawaiian Properties LLC
1165 Bethel Street, 2nd floor
Honolulu, Hawaii 96813

Aloha President Ramadass:

I have been an owner of a condo and resident at Makaha Surfside for 31+ years, one of your client accounts. It is my experience that elections run by property managers and staff from companies are lacking transparency for our Board of Directors . Specific to Hawaiian Properties:

1. A Notice of Meeting mail-out, dated Monday 14 January took five days before delivery. This suggests it was not put into Post Office on that same day.

2. It contained a Proxy and candidate letter from only one owner, with a sheet that listed him as the only person to so request inclusion. This was odd as normally a Proxy is not sent out with the Notice, but, in a 2nd mailing along with owners candidate letters. Mr. Doane did not advise owners in a timely fashion to submit such a letter, and, in a subsequent memo he posited that any signed proxies received before candidate letters were received by owners would be "valid". Therefore, should someone read a letter they liked, and, had already submitted theirs, there is no way for them to submit anew and supersede the previous one. Surely, an intrigue that caper was. In my 3+ decades in a condo, this never happened before. Also, a previous company we had service us before specified a proxy could be returned to the manager as an email attachment. This makes sense as most people no longer have personal fax machines in their home. That is old technology. So why does not your company specify sending an e-mail attachment is acceptable? The state condo statute mentions returning a proxy via electronic means.

3. At our December 2018 meeting I asked of Mr. Doane why your company does not apprise owners at an 'Annual Meeting' of 'how many' signed proxies had been received marked for the Board as a 'whole', and, to be divided 'equally' between a Board. He stared at me in silence and would not answer.

4. For our 2018 annual meeting, we had Albert Denys, Jr. He declined to mention to owners how many proxies had been assigned to the Board. During counting of ballots, in a 'sidebar' meeting our Board President made a Motion to award all such proxies to two of his friends. Again, no clue how many proxies were involved. This has become a ritual, which is why lobbyists got that item into our Hawaii condo statute 514B-123, obviously. This seems to be an 'industry' standard, withholding information.

5a. Later, paid a visit to Hawaiian Prop office to review election documents and asked for lists of assigned proxies. (This was early in 2018) Answer, 'No, but you can examine them and figure that out". Somewhat daunting. That, plus a limitation of just one hour. Under such circumstance, had to make two more

visits. Managed to get five hours at your business, but, this took me eight hours of commuting time from/to Waianae. Since your manager had such information at the meeting, failure to divulge was bad, and, only begrudging cooperation to provide them for examination adds up to an adversarial attitude towards owners. Why do you have such a policy?

5b. The audit of proxies I performed showed that **five** candidates received a total of 43 proxies. The number I received was also 43. There were 75 for Board as a 'whole' and 26 to be shared equally between its members. However, as no mention was made to attendees it was therefore easy for our Board President to make a sidebar meeting Motion to award "All proxies assigned to the Board to" (two of his friends, who themselves had just 4 and 13 proxies respectively).

Note - musing that 75 and 26 combined into 101 proxies, and, with 'Cumulative Voting' were worth 404 votes. This means, basically, we have sham elections.

And, the manager is involved in it, by his willful omission of information to attendees. Oh, 65 owners gave their proxy for quorum.

5c. Mention was made by a staffer that condo attorney Richard Ekimoto had provided an email communication on what documents could be withheld.

Interesting that he too, at \$384 an hour, is adversarial to owners, it seems.

Please provide me with a copy of the email to attorney Ekimoto which triggered that response, an unreacted copy of the Ekimoto email, and, the legal fee invoice which shows he was paid for his advice. Was that money charged to Makaha Surfside?

6. At our January of 2019 Board meeting, asked Mr. Doane for a copy of his communication to our condo attorney regarding him being tasked to write a ByLaws amendment for Online voting. Mr. Doane did speak, simply saying 'No'!!!

Please provide me with a copy of Mr. Doanes' communication on this to attorney Ekimoto.

7. Going back to Mr. Denys. At our 2017 annual meeting, the condo attorney took an informal straw poll of how many attendees would like to have Online voting an also via US Mail. It was about 60% in favor. He did this as we lacked 'quorum' to make Motions. Yet, at our February of 2018 Board meeting, Denys provided draft minutes to the previous annual meeting and declared there was 'no support' for the proposal. Not amusing. He refused to correct the minutes before, and at, the meeting. His defense, "It's in my contract to take the minutes". That also includes disinformation for the sake of 'politics'. Dishonorable for sure.

8. Can you require your managers to be more forthcoming?

9. Taking two roundtrip bus rides from Waianae took six hours. Plus, driving one time in my car took another two hours. This was unnecessary and happened because your company disrespects clients, in my opinion.

10. Would you recommend we move towards being 'self-governing', not having a management company?

11. The proxy should be sent out on e-mail, unless you prefer slowing response time causing owners to miss deadlines. Friends I have overseas liked getting theirs Online and then sending the company a jpeg attachment of their signed proxy. It is perfectly legal and common sense. Expecting some of our owners who reside in Canada, France, and New Zealand to deal with 'snail mail' is a bad idea. They pay their monthly fees via electronic transfer. Quick to take their money but slow to respect their rights regarding conveying timely information.

Proxie Solicitation

.pdf

49.3kB

2019 Proxie

.pdf

2.2MB

Copied to Property Manager Russell Doane

c/c to Daria A. Loy-Goto Director, Regulated Industries Complaint Office

Oahu Condo Issues

This Waianae Condo Development Has Lost Hundreds Of Thousands Of Dollars To Embezzlement

Condo association officials won't say who might have stolen the money, which appears to have disappeared over time and through phony invoices for work that was never performed.

By Ian Lind / October 10, 2023

Reading time: 7 minutes.

Owners of a Waianae condominium recently learned that more than \$300,000 had been embezzled from their condo association, perhaps the largest incident of its kind known to have occurred in Hawaii.

The theft was disclosed in a Sept. 19 letter to owners of apartments in the ***Makaha Surfside*** condominium from their board of directors.

The 454-unit Makaha Surfside, built in the 1970s,

is composed of several low-rise oceanfront buildings along Farrington Highway, located between Waianae High School and Mauna Lahilahi Beach Park.

The scheme involved unauthorized payments to vendors based on fraudulent invoices for work that had not been performed, related to projects that may have been planned but remained “unexecuted,” according to the board’s letter.

The theft apparently went on over at least a couple of years, according to two people with knowledge of the situation.



The Makaha Surfside condo development in Waianae is the scene of what’s perhaps the largest embezzlement from a condo association in the state. (Kevin Fujii/Civil Beat/2023)

An initial discrepancy was discovered in March “during a routine financial audit,” according to the letter, a copy of which was obtained by Civil Beat.

This “discrepancy” was described as a \$32,041.87 payment “that had been invoiced and distributed as an unauthorized payment for an unexecuted project.”

“This initial discovery prompted further investigation by the board, revealing an additional paid invoice for \$43,455.48,” the board’s letter stated.

Although the board attributed its discovery to a routine audit, the losses had not been uncovered during previous annual audits required by state law. Instead, the theft was discovered only after a few individual owners raised questions about what they believed were management and financial irregularities, according to several people familiar with the situation, including current and former owners.

They say questions raised were initially resisted by the board, and it was only through repeated and persistent questioning that the board finally agreed to undertake the audit that found one unauthorized payment, then another.

The sensitive political problem facing condominium boards is that those owners who persist in asking uncomfortable questions are all too easily dismissed as disruptive, and their efforts seen as unproductive. But sometimes, as in this case, those who are considered nuisances for continuing to badger the board turn out to have identified very real and unexpected issues.

After the initial discoveries, the board raised the matter directly with the president of Hawaiian Properties, the Makaha Surfside's managing agent, which conducted its own financial investigation, and retained an independent forensic auditor selected by the board, and paid for by Hawaiian Properties.

The total loss has been pegged at \$339,364.83, which appears to make it the largest loss of its kind uncovered in Hawaii.

Hawaiian Properties has now reimbursed the full amount stolen, along with legal fees incurred by the condominium association, the letter reported.

"The association has been made whole," a board member confirmed, although he was not authorized to discuss the situation.

[A Note On Anonymous Sources](#)

How Civil Beat Uses Sources

Civil Beat generally uses on-the-record sources. However, we occasionally use unnamed sources when a source is sharing important information we wouldn't have otherwise been able to obtain and when they could face negative consequences for speaking publicly. The reporter and at least one editor must know the identity of the source and the use of anonymity must be approved by a senior editor. You can read more about our anonymous sources policy [here](#).

Hawaiian Properties has identified suspects believed to have carried out the theft, and filed a criminal complaint with city prosecutors but requested that details remain confidential, according to the board's letter.

“Consequently, we are unable to disclose the names of the suspected parties or vendors at this time,” the letter stated.

The board has scheduled a Zoom meeting for owners on Tuesday evening to discuss the missing funds and the full reimbursement by Hawaiian Properties.

[Hawaiian Properties' website](#) describes the firm as “Hawaii's oldest and most experienced property management company.” It has been ranked for several years as the second-largest condo management company in the state.





With 454 units, the condo development is only 19% owner-occupied and many of the owners live out of state. Condo officials and their attorney are not revealing who the suspects in the theft might be. (Kevin Fujii/Civil Beat/2023)

In the wake of the Makaha Surfside theft, and despite stepping up to cover all of the condominium's losses, the company has provided a 60-day notice that it will cease providing property management services to the project at the end of November.

Pamela Briece, president of the Association of Apartment Owners of Makaha Surfside, reached by phone over the weekend, said she was unable to comment on the situation "on the advice of counsel." She referred questions to the board's attorney, Milton Motooka, a veteran Honolulu attorney who is senior partner in a firm that has long specialized in condominium and community

ing specialized in condominium and community association law.

Motooka, reached by phone on Monday, confirmed the Sept. 19 letter to owners, but said he could not provide additional details at this time due to the ongoing investigation and potential litigation.

Vulnerable To Fraud

Motooka said annual audits required of condominium associations are not typically the kind needed to catch a sophisticated scheme of this kind, especially in large projects such as Makaha Surfside that have substantial annual budgets and process numerous monthly invoices for goods and services.

Although the suspects in this case have not been publicly identified, Motooka said that, in a large project, it would not be difficult for a property manager or someone on their staff to slip phony invoices into the system for payment to a dummy company, or perhaps the company of a friend or relative.

Over the past several years, Makaha Surfside has undertaken significant repairs funded from its reserve account, which had a balance of \$4.1

million at the beginning of this year. Two recent studies of the Surfside's long-term maintenance and repair needs projected expenditures of nearly \$3 million during 2022 and 2023.

The condominium's active maintenance program and sizable reserve fund, coupled with the low proportion of owner occupants, may have made it a tempting target for insider theft.

All but five of the apartments are small, 412 square feet or less, with many owners living out of state, real estate records show. Only 19% of Makaha Surfside's units are owner-occupied, according to its most recent biennial registration filed with the state's Department of Commerce and Consumer Affairs.

The board's letter goes on to assure Makaha Surfside owners that "rigorous checks and balances have been promptly implemented, closely aligned with the recommendations of our independent forensic auditor."

As a result, the letter said, "our association's financial stability is now reinforced by comprehensive safeguards and new operational protocols."


Drier Cccc

Prior Cases

An online search of prior news stories found only a couple of previous incidents of embezzlement involving condominiums.

In 2018, a former vice chairman of the state Real Estate Commission pleaded no contest to felony theft charges for stealing from a private trust, and from a small, 20-unit Hilo condominium he had managed. As part of his plea agreement, he agreed to pay \$120,000 restitution to the Kawili Regency Condominium, and was sentenced to six months imprisonment and 10 years probation.

In an earlier case that made headlines, the CEO of a large property management company was fired in 2012 after she was found to have stolen over \$134,000 from three townhouse projects that were among those she personally managed. News reports at the time said the money had been taken over a period of at least two years.

She pleaded no contest in 2014 to multiple counts of felony theft for stealing a total of \$134,474 which she used to pay a variety of personal expenses. She was sentenced to a year in prison, and four years probation. 

About the Author



Ian Lind

Ian Lind is an award-winning investigative reporter and columnist who has been blogging daily for more than 20 years. He has also worked as a newsletter publisher, public interest advocate and lobbyist for Common Cause in Hawaii, peace educator, and legislative staffer. Lind is a lifelong resident of the islands. [Read his blog here.](#) Opinions are the author's own and do not necessarily reflect Civil Beat's views.

**Association of Apartment Owners - Makaha Surfside
Board of Directors**

Date: September 19, 2023

Subject: Uncovering and Addressing Financial Discrepancies

Dear Makaha Surfside (MSS) Owners,

We are bringing to your attention a major development regarding our association's financial matters. The board's commitment to transparency and accountability has prompted us to take significant steps in response.

In March 2023, during a routine financial audit, the board discovered a discrepancy of \$32,041.87 that had been invoiced and distributed as an unauthorized payment for an unexecuted project. This initial discovery prompted further investigation by the board, revealing an additional paid invoice for \$43,455.48.

This led us to raise the matter directly with the president of Hawaiian Properties (HP) for a more comprehensive investigation. HP's thorough examination unearthed an additional series of discrepancies totaling \$231,121.94.

In response, the board took proactive steps to ensure a meticulous and impartial investigation. An independent forensic auditor, chosen by MSS and funded by HP, was engaged. Our appointed forensic accountant's extensive and diligent work identified an additional sum of \$32,745.54, which had been raised to him by HP to investigate.

We are pleased to report that this matter was promptly resolved with reimbursement for a total of \$339,364.83 from HP. Furthermore, HP graciously also assumed the expenses associated with legal guidance for MSS throughout this process.

Since the board's initial findings, rigorous checks and balances have been promptly implemented, closely aligned with the recommendations of our independent forensic auditor. Our association's financial stability is now reinforced by comprehensive safeguards and new operational protocols. These measures are not only designed to meet industry standards but also tailored to address the unique needs of MSS.

We want to assure you that our commitment to transparency, integrity, and sound financial management remains unwavering. The ongoing cooperation between MSS staff, the board, and HP is a testament to our collective determination to address challenges head-on and uphold the highest standards of accountability.

HP has advised the board that it has filed a complaint with the Department of the Prosecuting Attorney against the parties suspected of the improper taking of the funds from the Association and requested that the identities of the suspected parties be kept confidential. The board has also inquired with an attorney with the Department of Prosecuting Attorney and been advised that information related to any complaint filed with them should be kept confidential, because the disclosure of that information will hamper their investigation. If the suspected parties are warned that they are being investigated, they may destroy or alter relevant evidence. Additionally, if the Association disclosed that information, it may expose the Association to liability for libel and slander. Consequently, we are unable to disclose the names of the suspected parties or vendors at this time.

We've scheduled a Zoom meeting on October 10, 2023, at 6:00 p.m. HST to discuss missing funds and reimbursement. Details are available at makahasurfside.net/calendar (or) <https://us02web.zoom.us/j/87324588031?pwd=a250a0dyU1NveTFYRkhucE5FNINKUT09> Meeting ID: 873 2458 8031, Passcode: 486320.

Warm regards,

Board of Directors
Mahaka Surfside

HB-176

Submitted on: 2/13/2023 6:47:00 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

[REDACTED]	Organization	Testifier Position	Testify
	Individual	Oppose	Written Testimony Only

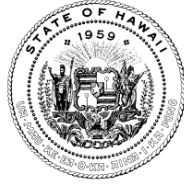
Comments:

I have always been proud of Hawaii and its continuing efforts to make sure everyone can vote. Condominiums are organizations with its stakeholders a unit owner. Unit owners may be an individual, a family, a LLC, a corporation; some may be local and others on the mainland. But all that have a legal interest in their property. All have a right to vote including to voluntarily give a proxy to whom they select. It's how all corporations work throughout Hawaii and theUSA.

Electronic voting is coming of age but no platform exists today than can properly and accurately deal with the multitude of annual meeting issues like cumulative voting tabulation. It does not exist (yet).

Often candidates for election are nominated at the annual meeting. Let's not forget more than 1,000 Hawaii condominium have less than 50-units. Roberts Rules already addresses procedures, elections, run-offs, etc.

This is a horrible Bill that only creates additional cost to an association.



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE
DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Housing
Wednesday, February 15, 2023
9:30 a.m.**

**On the following measure:
H.B. 176 RELATING TO CONDOMINIUM ASSOCIATIONS**

Chair Hashimoto and Members of the Committee:

My name is Esther Brown, and I am the Complaints and Enforcement Officer of the Regulated Industries Complaints Office (RICO), which is an agency within the Department of Commerce and Consumer Affairs (Department). RICO defers to the Real Estate Commission's (Commission) position on all policy, administrative and implementation matters regarding the proposed expansion of their jurisdiction, and **offers comments** only on that aspect of the measure.

One of bill's purposes is to expand the Commission's general authority, investigatory powers, cease and desist orders, powers to enjoin, and penalties, to include the provisions of HRS sections 514B-123 and 514B-124.5, which cover "association meetings; voting; proxies," and "voting for elections, cumulative voting" respectively. See page 1, lines 5 – 6; page 2, line 1, 18 – 19; page 3, line 20, and page 4, lines 10 – 11, 17, of the measure.

RICO is an agency within the Department that provides the investigatory and prosecutorial function of licensing boards, like the Commission, that are administratively attached to the Department. Unlike the broad powers that the Commission has over matters affecting real estate in the state, RICO's authority to receive complaints, investigate and prosecute is grounded in commercial real estate transactions for which licensure is required by the Commission because the licensure process will safeguard the health, safety or welfare of consumers of those real estate services.

The rights and events set forth in Hawaii Revised Statutes (HRS) sections 514B-123 and 514B-124.5 ¹ do not involve the public, do not involve commercial real estate transactions, and they do not require a Commission-issued license. When owners in a project attend their annual meetings and cast their votes, therefore, they are determining issues that are unique to their place of residence, and they are doing so in their capacity as private persons.

Therefore, if the proponent of the measure believes that RICO will be overseeing what happens at every annual meeting and election for every registered condominium project throughout the State, because of the proposed inclusion of sections 514B-123 and 514B-124.5 into the Commission's broad authority, that is not the case. RICO is not authorized to regulate, prohibit, or enjoin this type of personal, private conduct.

Thank you for the opportunity to testify on this bill.

¹ HRS section 514B-123 addresses: voting rights and procedures for units owned by multiple persons (subsection a); proxy-voting for units owned by multiple persons (subsection b); voting limitations for units owned by an association (subsection c); conditions for an owner's proxy to be valid (subsection d); the content of owner proxy forms (subsection e); how long an owner's proxy lasts (subsection f); whether a copy of a proxy is as good as the original (subsection g); the procedure for using association funds to distribute or solicit proxies (subsection i); restrictions on solicitations and voting by management (subsection j); and the process for and limitations on owner solicitation of proxies (subsection k). HRS section 514B-124.5 addresses the process for cumulative voting for an association election (subsection a); unit owners' right to cumulate votes (subsection b); how nominees are elected (subsection c); and how vacancies are filled by boards in accordance with the association's governing documents (subsection d).



Auwe !!
Voting Rights
Suppression
HRS 514b-123
UNFAIR!!!

Lourdes Scheibert
920 Ward Avenue
Honolulu, HI 96814

February 13, 2024

The Honorable Representative Mark M Nakashima, Chair
House Consumer Protection and Commerce
415 South Beretania Street, Room 329
Honolulu, HI. 96813

RE: HB 2067:

Removes from the standard condominium proxy form the option of giving a proxy vote to the board of directors of a condominium association as a whole or to directors present at the meeting. Requires a disclosure statement on the standard condominium proxy form informing unit owners that an association may direct elections by electronic, machine, or mail voting.

Dear Chair Nakashima and members of the Committee

I am Lourdes Scheibert, a condominium owner in Kakaako, retired and former partner of Scheibert Energy Company specializing in power quality studies providing data to professional engineers and global engineering companies. I am one of many owners concerned over the self-governance of our communities.

The Developer included proxies in the original Declaration even before they were incorporated into the Hawaii statute in the late 1960s. Proxies have been included in every condominium document to provide each stockholder with the ability to appoint another owner to vote on their behalf, based on a trusted relationship between owners.

This provision grants owners the freedom to make their own choices without introducing additional complexities in proxy voting. In the initial development of condominium documents in the late 1960s, cumulative voting by stockholders/condo owners was introduced alongside proxy voting. For instance, if there are three positions available, each stockholder has the ability to cast three votes. An owner can choose to allocate all three votes to a single candidate or distribute them equally among multiple candidates. It is worth noting that many owners are unaware of the concept of cumulative voting.

The inclusion of two options for proxy voting, either giving the owner's votes to the board as a whole or sharing them at the meeting, amplifies the cumulative voting effect by consolidating a significant block of votes for the board.

The introduction of these two options into legislation in 1984 was initiated and highlighted in the testimony ¹ of Richard Port, former Chair of the Hawaii Democratic Party. In his written statement, he articulates:

With regard to the current abuse in which some boards use association funds to solicit proxies under the guise of obtaining a quorum and then using the proxies to reelect themselves or in other ways to maintain control over Association funds, which sometimes exceed \$_____ a year, this abuse needs to be controlled.

In my understanding, the inclusion of these two options was intended to legitimize the practice of boards utilizing association funds to solicit proxies and consistently vote for themselves, as well as to enable the recruitment of owners who would align with their agenda.

The removal of the option to proxy votes to the board as a whole or shared will not impact the freedom of voting rights as outlined in the written Declaration. In essence, the removal of these proxies does not impede an owner's constitutional rights to fair elections as guaranteed by the Federal Government.

Maintaining the Infrastructure & Ensuring the Safety of the Residents

It has become a common practice for boards to consistently postpone maintenance rather than implementing preventive maintenance measures. Classes on condominium law 514B by CAI and HCCA caution board members against "kicking the can down the road." The practice of intentionally keeping the Reserves at artificially low levels has resulted in new owners bearing the financial burden of repairing and replacing building components thru large assessments.

This is a scenario where a board that continuously re-elects themselves can maintain a unified voice and override the concerns of a minority board member, thus preserving the status quo. However, it is important to note that CAI and HCCA emphasize that 514B outlines the process for budgeting, Reserves, maintenance, and the overall fiscal health of the Association. It is crucial for board members to receive proper education and guidance in the realm of self-governance to make informed decisions. Unfortunately, many board members lack the necessary knowledge and understanding in this regard.

¹1984 Richard Port written testimony To Honorable Steve Cobb S.B. No. 1816

The main motivation behind my proposal to eliminate proxies to the board stems from the board of directors' inability to assess the infrastructure of their buildings and prioritize maintenance and repair requirements. This form of self-governance has not successfully accomplished the objectives set forth by CAI and HCCA over the past few decades.

I have safety concerns, specifically regarding a single component that has reached its end of life: the Federal Pacific Dead Front Switch Board. Many property owners are unaware of the criticality of replacing this component once it reaches its end of life. Without a proper plan in place, the failure of this component could result in costs exceeding millions of dollars.

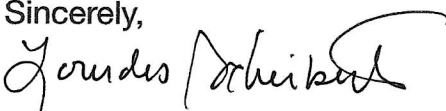
The Federal Pacific switch board has become obsolete, and repair parts are no longer available since the company no longer exists. It is of utmost importance for buildings constructed between the 1960s and 1970s to proactively plan for its replacement. This process should begin by engaging a qualified firm that can design a new system capable of interfacing with HECO's high-voltage equipment.

Scheibert Energy Company specialized in evaluating power quality in buildings through the collection of data using industry-recognized meters such as Fluke meters, Dranetz meters, and Electroflow meters. Our role was to provide engineers with the necessary data to make recommendations to their clients regarding energy efficiency and conservation. Drawing from my extensive field experience, I have reviewed properties ranging from hospitals, treatment plants, military facilities, hotels, to condominiums.

Association boards, management companies, and resident managers should prioritize proactive building maintenance over cosmetic upgrades. It is essential for them to invest in educating themselves to enhance their ability to effectively govern an entire community. By focusing on proactive maintenance, they can ensure the long-term well-being and functionality of the buildings they oversee.

You take care of the building, you take care of the owners and tenants.

Sincerely,

A handwritten signature in black ink, appearing to read "Lourdes Scheibert". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Lourdes Scheibert

1600 Ala Moana Blvd. #3100
Honolulu, Hawaii 96815
March 1, 1984

The Honorable Steve Cobb
State Senate, Room 202
State Capitol
Honolulu, Hawaii 96813

Dear Senator Cobb:

My name is Richard Port. I am testifying in support of S.B.No. 1816.

The practice of having resident managers and managing agents soliciting and casting votes for the election of association board members, places these individuals in an obvious conflict of interest situation, and this practice needs to be eliminated immediately.

With regard to the current abuse in which some boards use association funds to solicit proxies under the guise of obtaining a quorum and then using the proxies to reelect themselves or in other ways to maintain control over association funds, which sometimes exceed \$2,000,000 a year, this abuse needs to be controlled.

With this in mind, I suggest the following revised language for S.B. 1816-84:

No resident manager or managing agent shall solicit or accept any proxies from any apartment owner of the association of owners which employs him or her, nor shall he cast any proxy vote for an apartment owner of that association at any association meeting.

No member of a board of directors who uses association funds to solicit proxies, shall cast any proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors.

I hope the above will be perceived as a friendly amendment to S.B. 1816-84.

Thank you for allowing me to testify on this bill, and thank you for the excellent work this committee is doing to improve condominium law.

Sincerely,

Richard J. Port

Richard J. Port

SB 1816
Aug. 3/2/84
3:00 p.m.

HB-2067

Submitted on: 2/13/2024 1:00:09 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kathryn Hoffmann	Individual	Support	Written Testimony Only

Comments:

I am a condominium owner and I support HB 2067 relating to condominiums.

HB-2067

Submitted on: 2/13/2024 1:58:12 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Bebe Bainum	Individual	Support	Remotely Via Zoom

Comments:

I am writing in support of HB 2067. I believe that the current system is antiquated and provides too many opportunities for someone to unfairly and dishonestly manipulate the outcome. I see no downside to supporting the improvement of the current process.

Respectfully,

Bebe Bainum

LATE

HB-2067

Submitted on: 2/13/2024 2:10:07 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laura Haase Yamada	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

1. associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

1. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

HB-2067

Submitted on: 2/13/2024 2:50:55 PM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Tony Nodine	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 2067 for the following reasons:

1) Condominium associations are legal entities that act by and through their boards of directors. Condominium boards are comprised of individual directors who are members of their associations and elected by the owners. These individual directors act collectively as a body (i.e., the board) to oversee the administration and operation of the condominium project. It is the board, as a whole, that most owners rely upon and trust to manage the affairs of their associations. It therefore follows that many owners give their proxies to the “board as a whole,” or to “those directors present at the meeting, with the vote to be shared with each director receiving an equal percentage” because their faith and confidence is in the board and individual directors. For those owners who do not have confidence in their association’s board of directors or individual directors or prefer to give their proxies to someone other than the board or individual directors, they are free to check one of the other boxes on the standard proxy form and give their proxies to an individual of their choosing.

The four boxes on the proxy are intended to give owners the freedom of choice in selecting a person of their choosing or the board, as an entity, to act as their proxy at association meetings. The law has allowed owners to give their proxies to the board as an entity since 1984 and to the board members individually, with each director receiving an equal percentage, since 1989. There is simply no good reason to change these options on standard proxy forms. The Legislature should not interfere with the right of owners to choose who they wish to appoint as their proxies.

2) H.B. 2067 also appears to require that all standard proxy forms include a “disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, or mail voting.” A statement of this nature should not be made mandatory on all standard proxy forms because it is confusing and misleading. It implies that owners may vote in all elections by electronic, machine, or mail voting, when the fact is that electronic, machine, and mail voting may be utilized only under the circumstances described in HRS Section 514B-121(e).

3) Finally, the deletion of the reference to the boxes in subparagraphs (A) through (D) in the last sentence of HRS Section 514B-123(e)(1) will create confusion because that language is needed to distinguish those boxes from the box referred to in HRS Section 514B-123(e)(2) related to the audit report.

For the reasons stated herein I OPPOSE H.B. 2067 and urge the committee to defer it.

Respectfully submitted,

Tony Nodine

HB-2067

Submitted on: 2/14/2024 4:14:41 AM

Testimony for CPC on 2/14/2024 2:00:00 PM



Submitted By	Organization	Testifier Position	Testify
Ben Robinson	Individual	Support	Written Testimony Only

Comments:

I absolutely support this bill!

LATE

HB-2067

Submitted on: 2/14/2024 7:17:44 AM

Testimony for CPC on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Bonnie Fraser	Individual	Support	Written Testimony Only

Comments:

I wholeheartedly support this.