



Via Online Submission

February 13, 2024

Honorable Mark N. Nakashima, Chair
Honorable Jackson D. Sayama, Vice Chair
House Committee on Consumer Protection & Commerce
&
Honorable David A. Tarnas, Chair
Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs
415 South Beretania Street
Honolulu, Hawaii 96813

Re: HB2318 related to Hawaii Nonprofit Corporations Act
COMMENTS & CONCERNS

Dear Chair Nakashima, Chair Tarnas, Vice-Chair Sayama, Vice-Chair Takayama and Committee Members:

The Community Associations Institute ("CAI") is a national and statewide organization of individuals involved in the operation of community associations, including condominium associations, planned community associations, homeowners, directors, property managers and business partners of community associations. CAI has concerns about HB2318 and respectfully provides the following comments for the committees' review and consideration:

HB2318 fails to take into account the fact that the following statutory provision already exists in Chapter 414D:

§414D-311 Superseding chapters. In the event of any conflict between the provisions of this chapter and the provisions of chapter 421J, 514B, or 514E, the provisions of chapter 421J, 514B, or 514E shall supersede and control the provisions of this chapter.

In the event neither Chapter 514B or Chapter 421J or an association's declaration or bylaws provides guidance on the definition of Board quorum or whether decision reached by directors at certain Board meeting when quorum is present, HRS § 414D-311 is useful to function as the gap filler to provide operation guidance in the event the association is incorporated.

Honorable Mark N. Nakashima, Chair
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The amendment proposed by HB2318 could potentially impact third parties' interests as to whether certain board decisions made on behalf of a condominium or community association would be binding upon such association, and also lead to disputes.

Very truly yours,

/s/ Na Lan

Na Lan

For

Community Associations
Institute, Legislative Action
Committee, Hawaii Chapter



**HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS
LEGISLATIVE COMMITTEE
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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 325
415 South Beretania Street
Honolulu, HI 96813

Honorable Rep. David A. Tarnas, Chair
Honorable Rep. Gregg Takayama, Vice Chair
House Committee on Judiciary and Hawaiian Affairs (JHA)
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in SUPPORT OF HB2318; Hearing Date: February 15, 2024 at 2:00 p.m.; sent via Internet

Dear Rep. Mark M. Nakashima, Rep. David A. Tarnas, Chairs, 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). 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 SUPPORT OF HB2318

Summary of Bill; Comments:

The bill proposes to separate the voting requirements for Planned Community Association and Condominium Association (collectively called "Associations") boards from the voting requirements for boards in the nonprofit corporation act.

The nonprofit corporation act applies to the subset of all Condominium and Planned

Community Associations which have decided to incorporate as nonprofit corporations.

Associations are required to use the current edition of Robert's Rules of Order Newly Revised ("Robert's Rules") for their meetings. Robert's Rules already defines a majority vote as a default provision for boards of directors.

Associations may have a different voting requirement specified in their Bylaws which overrides the default provision in Robert's Rules. The Association has the option to change this by amending their documents. However, that is the choice of the Association membership through their Bylaws and is consistent with the philosophy of self governance.

Several Associations have implemented a majority vote for their board meetings. The majority vote principle permits board members to abstain without adversely affecting the outcome of a vote. In the Association environment there are situations where a director may abstain due to a conflict of interest, not having enough information, etc.

Association board sizes range from a 3 member board to a 12 member board and in some cases, an even larger size.

HRS §414D-147(b) affects the vote requirements for all boards of nonprofit corporations. It makes an abstention the mathematical equivalent of a "no" vote. For example, assume the following at an Association board meeting:

- a. 5 members are present at a board meeting of which 2 of them are developer representatives.
- b. A main motion is presented to take specific action,
- c. The developer representatives wish to abstain due to an appearance of a conflict of interest, regardless of whether one exists.

HRS §414D-147(b) as applied to Associations would require **that all 3 of the remaining directors** agree on the main motion. This mathematically turns an abstention into the equivalent of a "no" vote rather than a neutral one. It is unfair to directors who want to **"stay out of the fray"** or just don't have enough information to make a decision.

Additionally, directors may abstain for reasons other than a conflict of interest. For example, a director may abstain because the director doesn't want to oppose a proposition but doesn't have enough information to vote. It is disingenuous to mathematically count that as a no vote.

If the bill becomes law, board meeting decisions would still be protected through either the Association's governing documents or Robert's Rules (in that order).

Conclusion:

A fundamental principle of Association management has been self-governance. Where there has been a compelling state interest, legislation has been enacted in the appropriate chapters for Planned Community Associations (Chapter 421J) and Condominium Associations (Chapter 514B).

The mix of the nonprofit corporation statute with Association governance has had some unintended consequences such as this one.

We respectfully request that the Committee approve this bill as presented.

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

LATE

HB-2318

Submitted on: 2/15/2024 11:07:44 AM

Testimony for CPC on 2/15/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Milica B.	Individual	Support	Written Testimony Only

Comments:

YES quorum of Board members must be majority of them.

The lines about bylaws should be eliminated and HRS514B should be ammended to state that quorum is majority of Board members