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February 21, 2024

Honorable David A. Tarnas
Honorable Gregg Takayama
Committee on Judiciary & Hawaiian Affairs
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **HB 2067 HD1 OPPOSE**

Dear Chair Tarnas, Vice Chair Takayama and Committee Members:

HB 2067 HD1 should be deferred. Per the committee report following hearing on HB 2067:

Your Committee finds that under existing law, a proxy vote may be allocated to the board of directors of a condominium association as a whole or to the directors present at the meeting. However, this existing practice may be exploited to enable existing officers of the board to continue to sit on the board. This measure removes those options from the standard proxy form.

That finding is unsupported empirically. There is no real world basis for that finding, apart from the complaints of activist advocates of minority rule.

Eliminating the board majority and the board equal boxes on a proxy will result in the concentration of power. Power is *diffused* when a majority of a board must decide whom to support and/or when each director is free to vote in accordance with personal inclination.

The only reason to deprive satisfied owners of the option to give a proxy to the board is to transfer control to the minority activists, who often have the *desire* but not *capacity* to govern effectively. Passing HB 2067 HD1 would be a serious disservice to condominium owners.

Condominium owners have no obligation to support a board that does not serve their interests. There is no objective reason to consider them to be unable to vote their interests. Boards have to be responsive to owners or, like other elected officials, they can be voted out of power or removed.

Jill M. Tsuchitori, Esq.

December 18, 2023

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The effort to eliminate the proxy options at issue is not new. It is the persistent effort of critics of condominium self-governance. Attacks on the proxy options were already a standard tactic when the attached **2017** bar journal article was written.

The attacks have not gained merit in the interim. Even if some board somewhere has "exploited" something, a law of general application should not be passed to change the system for all. There are ample remedies, including removal of directors who fail to perform their fiduciary duties.

As noted in the Final Report to the Legislature on the Recodification of Chapter 514A:

Guiding Principles:

1. The philosophy guiding Part V (Management of Condominium) continues to be minimal government involvement and self-governance by the condominium community.

This also means that the condominium community (both owners and management) should have the tools with which to govern itself. Self-governance (e.g., conduct of meetings, voting) should be enhanced. This does not mean that every problem and contingency should be addressed in State law (as happened too often in the past, one of the causes of the need to recodify Hawaii's condominium law). Addressing problems in State law is appropriate in some areas. Other problems may more appropriately be handled in condominium governing documents or through other private mechanisms. And some matters simply must be resolved in court.

Real Estate Commission's Prefatory Comment to Part V (excerpt).

HB 2067 HD1 should be deferred.

Very truly yours,


Philip S. Nerney

Enclosure (See page 11 of the article)

Challenges to Condominium Self-Governance

by Philip S. Nerney

Condominiums have traditionally been self-governing. Recently, however, there have been legislative efforts to subject condominiums to direct operational control by government.

Advocates for executive branch control promoted substantially identical bills in 2016 (HB 1802) and 2017 (HB 35). The "Office of Self-Governance Oversight" was proposed in 2016. The office was to be headed by the "condominium czar."

The same concept was repackaged as the "Office of Condominium Complaints and Enforcement" in 2017. The office was to be headed by the "complaints and enforcement officer."

Those bills did not become law. Still, the interest in having a government employee regulate the specific functions of condominiums is significant.

Both bills were premised on essentially the same proposed "finding." As framed in HB 35:

The legislature finds that while condominium self-governance has been successful in the State, there have been abuses as evidenced by the actions of certain condominium boards. The legislature also finds that a central enforcement body is needed to address the problems faced by many condominium owners who sometimes fear retribution from certain board members when challenging their governance.

There were 160,854 condominium units (aka apartments) within 1,693 registered condominium associations as of June 30, 2015;¹ so it is possible to imagine that abuses have occurred. The more interesting question is whether direct governmental control of approximately 29 percent of the housing units in the state² would be appropriate. Condominium units are private (and *not* public) housing.

Nonetheless, "condominiums are creatures of statute."³ As noted in the Real Estate Commission's ("Commission") 2003 Final Report to the Legislature ("Final Report") concerning recodification of condominium law, "condominium property regimes law is essentially an *enabling* law," that: 1) allows the condominium form of ownership, 2) protects purchasers through adequate disclosures; and 3) allows for management of the ongoing affairs of the condominium community.⁴

The first Hawaii statute enabling the condominium form of ownership was passed in 1961, more than half a century ago.⁵ A premise of that form of ownership is that each condominium unit is a separate parcel of real estate that is separately taxed.⁶

"Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.⁷

Condominium projects entering the market must be registered with the Commission.⁸ Disclosures about the project are part of the registration process.⁹

Purchasers, therefore, have an opportunity to understand that they are purchasing something quite different from a single-family dwelling. An understanding of condominium governance is relevant here.

I. The structure of condominium governance

Condominium governance is structured by statute. That structure begins with unit owners. The owners of all the units form an association.¹⁰ The prime function of the association is to elect a board of directors ("Board"), and certain major decisions set forth in statute and in the association's governing documents are also reserved to the association.¹¹

The governing documents are the declaration of condominium property regime ("Declaration"), the condominium map, By-laws and house rules. A condominium is created by the recordation of a Declaration. The land and improvements comprising the condominium are described in the condominium map. By-laws and house rules add operational detail to the governance structure.

The powers and duties of the Board are substantial.

§514B-106 Board; powers and duties. (a) Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.

Board power is limited by statute, by provisions of the governing documents, and by the owners' power to remove directors who perform poorly. Otherwise, the Board governs the association.

Legal and political restraints on director behavior are significant. Some owners consider such restraints to be inadequate though due to the financial and personal impacts that can result from the exercise of Board power.

Questions of power and control are at the heart of the differing perspectives regarding the sufficiency of existing condominium governance structures. There is no doubt that personal autonomy is burdened in the condominium setting; so those valuing personal autonomy over the benefits of condominium living may feel infringed upon or even powerless. One Florida court balanced the benefits and burdens this way:

It appears to us that inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property. Condominium unit owners comprise a little democratic sub society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization.

Hidden Harbour Estates, Inc. v. Norman, 309 So.2d 180, 182 (Fla. App. 1975). The premise of majority rule is recognized in that often-cited formulation.

Legislation passed in 2000 resulted in a comprehensive review of Hawaii condominium law. Review was indicated because the legislature found that:

Those who live and work with the law report that the condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micromanages condominium associations. The law is also overly regulatory, hinders development, and ignores technological changes and the present-day development process. However, the desire to modernize the law must be balanced by the need to protect the public and to allow the condominium community to govern itself.

Act 213 (2000). The review task was performed by an appointed committee of stakeholders with competing interests. The resulting Final Report was accompanied by proposed draft legislation.

The draft legislation was influenced by numerous sources and authorities. These include the 1980 Uniform Condominium Act, the 1994 Uniform Common Interest Ownership Act, the Restatement (Third) of Property: Servitudes (Am. Law Inst. 2000), then-current Hawaii law, the condominium law of other jurisdictions, and public input.¹²

The legislature thereafter enacted Chapter 514B of the Hawaii Revised Statutes ("Haw. Rev. Stat.") effective in 2006. Complaints about condominium governance have continued unabated since then.

The legislature did not repeal the prior condominium law (Chapter 514A) until 2017. Repeal will become effective on January 1, 2019, leaving certain developers additional time to bring projects approved under prior law to market.

Chapter 514B has controlled most aspects of condominium governance since it became effective, and Chapter 514A has largely been a dead letter since then. Some amount of study has nonetheless been necessary to achieve a proper understanding of what law applies in what circumstance.

The simple fact that a condominium home is not a castle is central to the debate over self-governance. Common expectations about the level of autonomy and self-determination that should accompany home ownership may go unmet in the condominium setting. Worse yet, condominium ownership means being involved in a substantial economic enterprise in common with strangers who may come and go at will.

The members of a condominium association form a *secondary* group, in sociological terms, suggesting one that is largely impersonal and transactional. Regulation of such groups tends to be more formal and structured than in *primary* groups, which tend to be regulated by deep, enduring interpersonal bonds and shared culture.¹³

And yet, individual owners want liberty. One owner's expression of liberty, though, sometimes sharply conflicts with some other owner's liberty interest. One owner's political and/or social values may be abhorrent to another owner. Nonetheless, condominium owners are stuck together all the same, whether they like it or not.

II. The governance tasks to be performed

Conspicuous governance tasks include budgeting for maintenance and repair, overseeing the use of the condominium project, and general administration. Each of these tasks present challenges relevant to the debate over self-governance.

A. Budgeting for maintenance and repair

As noted above, portions of condominium property, known as common elements, are held in common by unit owners. The maintenance and repair of these common elements is an operational aspect of condominium governance. The whole association must sustain the building or buildings in which the individually owned units exist and the grounds on which the condominium is located. Owners, by contrast, are individually obligated to maintain and to repair their respective *units*.

The maintenance and repair of the common elements entails expense. Common expenses are assessed to unit owners through the budgeting process. Owners are each assigned a percentage of the common expense "in proportion to the common interest appurtenant to their respective units, except as otherwise provided in the declaration or bylaws."¹⁴

"'Common interest' means the percentage of undivided interest in the common elements appurtenant to each unit, as expressed in the declaration, and any specified percentage of the common interest means such percentage of the undivided interests in the aggregate."¹⁵ The aggregated common interests total 100 percent and the percentages of common interest assigned to specific units correspond to a prescribed scheme such as one based on unit size. Owners of larger units typically pay a greater portion of the common expenses than smaller units do, because the percentage of common interest allocated to a larger unit is usually greater than the percentage allocated to a smaller unit.

An operating budget must be adopted at least annually and made available to unit owners.¹⁶ Some of the budget components, such as insurance, are prescribed by statute.¹⁷ Other budget components may depend on the features and amenities of a given condominium.

Board members owe a fiduciary duty to the association; so they cannot in good faith satisfy the desire to limit assessments by keeping maintenance fees artificially low. The assessment of adequate replacement reserves, for example, is mandated by statute.¹⁸

Deferred maintenance can prove to be unwise in all events. Many industry professionals can recite examples of how something like the failure to paint

a building or to repair concrete spalling at an early stage has led to substantially increased costs when the work is finally performed.

B. Overseeing use of the condominium project

The use of a condominium project affects quality of life issues. The resale value of units may also be affected by how the project is used.

An association's Declaration and By-laws provide a basic structure for use of the project. House rules can also be adopted to further regulate use of the common elements. The use of house rules to regulate behavior within units is limited by statute.¹⁹ In practical effect, that limited power often relates to preventing nuisances.

C. General administration

General administration is used herein to signify a broad array of tasks. Maintenance fees must be collected, books and records must be kept, contracts must be negotiated, and there must be a focal point for attending to ordinary and extraordinary events affecting the condominium. The Board performs these tasks.

Board officers are chosen by, and serve at the pleasure of, the Board. The President, Vice-President, Secretary, and Treasurer have assigned duties. Directors who are not officers only have a specific governance role during meetings or as assigned by the Board.

Most Boards are aided in governing the condominium by professional managing agents, serving as independent contractors. Managing agents add a significant layer of administrative support to a condominium. In particular, some functions of the offices of Secretary and Treasurer are often performed by the managing agent.

"Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent."²⁰ Managing agents must be licensed real estate brokers, register with the Commission, and carry a fidelity bond.

Property managers working for the managing agent need not be brokers themselves, but they often hold professional credentials supplied by industry. The Community Associations Institute ("CAI") enables property managers to earn various designations, for example, including its top designation of Professional Community Association Manager.

Resident managers are employees who provide day-to-day operational support for the condominium. Resident managers commonly interact with

owners and vendors. They may perform or supervise maintenance work and/or attend to other duties. Duties may vary significantly depending on the needs of the condominium.

Much of the administrative load associated with condominium governance is handled by Boards with the support of managing agents. Resident managers round out the administrative team.

III. The fiduciary duty

Board members are fiduciaries. This is stated in Haw. Rev. Stat. § 514B-106(a), and standards applicable to officers and directors of non-profit corporations are incorporated therein by reference. Based on Act 87 (2017), condominium directors (*see* Haw. Rev. Stat. § 414D-149) and officers (*see* Haw. Rev. Stat. § 414D-155) must discharge their respective duties: 1) in good faith; 2) consistent with the duty of loyalty; 3) with ordinary care; and 4) in the best interests of the condominium association. These requirements apply as a matter of *condominium* law, regardless of whether the condominium association is incorporated, and are consistent with common law requirements.

Unpaid volunteer Board members who serve faithfully are protected from personal liability by statute, and grossly negligent Board members are not.²¹ In addition, condominium By-laws generally provide for the indemnification of Board members. Well-written indemnification provisions grant indemnification except in the events of gross negligence and willful misconduct. Directors' and officers' insurance further reduces the risk of service.

Service on a condominium Board entails at least some irreducible legal risk. That risk may not always be appreciated and can come as a surprise. Risk sometimes stems from resentment by owners who expect to live in their homes free from external control.

IV. The meaning of home

The importance of home to identity is easy to appreciate. It has been said that home is where the heart is. More philosophically, the establishment of a home has been described as "at the heart of the real."²² The balance of power in a home, then, may be intensely felt and meaningful to many.

V. The balance of power

Advocates of government control rightly note that there are power imbalances in condominium governance. Broad power is vested in the Board, subject to meeting the standard of a fiduciary.

The system of electing representatives to govern a broader populace is familiar in America. That system is in effect at the municipal, state, and federal levels.

Elected officials do not, in that larger sphere, always receive the votes of all voters or enact policies favored by all. Elected officials have power all the same.

The power to elect and to remove Board members is held by condominium owners. Choosing wisely and monitoring the performance of Board members enables the reflection of majority preferences in condominium governance.

The power to remove directors is an important check on Board power. The decision to remove a director need not be for cause or even be rational. It need only be supported by owners holding more than fifty percent of the common interest.²³

The power to amend the governing documents is also held by the owners. Under Chapter 514B, most Declaration and By-laws provisions can be amended with the approval of owners holding at least sixty-seven percent of the common interest.²⁴ Law and public policy seem to supply the only limits on what amendments can be made.²⁵

The nature of condominium governance is further reflected in the fact that Board members owe a fiduciary duty to the *association* rather than to individual owners. The *membership* of an association consists of unit owners, but the association itself is more than the sum of its parts. The association has separate legal existence, regardless of whether it is incorporated or unincorporated.²⁶

External control is a feature of condominium ownership that differs markedly from the ownership of other real property. Discrepancies between the expectations of owners and the reality of condominium ownership can lead to conflict in some situations.

VI. Conflict in condominiums

The sources of conflict in condominiums are manifold. Some conflict is simply explained, because conflict appears to be endemic to human society.

A complaint about condominium governance, therefore, may really be about something else. It is important to distinguish between real governance issues and issues that simply become manifest in the condominium setting.

For example, some conflict is interpersonal. Owner A dislikes owner B.

Some conflict is intrapersonal. Financial and/or personal stressors can overwhelm a person's normal coping mechanisms. Also, the National Institute of Mental Health reported for 2015 that 17.9 percent of all U.S. adults experienced a diagnosable mental illness within the previous year.²⁷

Problems of governance can arise when interpersonal or intrapersonal conflicts become manifest in the condominium setting. This is not necessarily because of a clear nexus to some Board power or duty.

Some claims of abuse of power stem from dissatisfaction with a Board's response to an owner's demand. That is, a dissatisfied owner may either perceive Board action or inaction to be abusive, in and of itself, or an unsatisfactory experience may become a catalyst for challenging subsequent Board action. There are many points of potential friction in the condominium setting, some of which may be inevitable regardless of what governing authority is in place.

VII. The abuse of power

The real thrust of the case against self-governance is the allegation of serious malfeasance reflected in HB 35. In this view, Boards are venal. Board members oppress owners and retaliate against those who exercise their rights. Owners must live in fear.

The HB 35 finding (quoted above) was not the result of study, however. The extent of the alleged abuse was unquantified, and that finding was not supported by empirical data.

That is unfortunate, because empirical data is available. CAI has commissioned scientifically valid national surveys of satisfaction with association living in 2005, 2007, 2009, 2012, 2014, and 2016.²⁸ Those surveys have found that: "By large majorities, most residents rate their overall community experience as positive or, at worst, neutral."²⁹ The range of those who have reported negative perspectives in those surveys, from 2005 to 2016, was 8 percent to 12 percent. This is consistent with CAI survey results for Hawaii. A total of "87% of residents rate their community association experience as positive (65%) or neutral (22%)."³⁰

CAI issued a Statement of Survey Integrity following what it termed "inaccurate statements" by an entity that developed different findings through an on-line self-report survey. CAI argued that its polling was conducted scientifically and that the competing findings lacked scientific validity.³¹

The prevalence of abuse of power by Boards has yet to be established. There is an objective basis for suggesting that only a small percentage of owners perceive Boards to be abusive.

There is also a question as to whether abuse of power would be eliminated by appointment of a government official to serve as "condominium czar." According to the FBI, "it is estimated that public corruption costs the U.S. government and the public billions of dollars each year."³²

Power might be abused in various ways, by whomever is in charge. For example, money might be stolen. Bribes might be taken. Pet projects might be approved. Elections might be rigged. Mandates contained in law and the governing documents might be ignored.

A. Crime

Theft and bribery are crimes. Criminal law is an available remedy to address alleged crime in condominium governance.

The handling and the disbursement of association funds are directed by statute. Also, "Any person who embezzles or knowingly misapplies association funds received by a managing agent or association shall be guilty of a class C felony."³³ When a management company executive stole association funds several years ago, she was prosecuted and the funds were repaid.³⁴

Owners are entitled to receive an annual audited financial statement,³⁵ as an aid to transparency. Owners are also entitled to a wide variety of financial, and other, documents of the association.³⁶

Managing agents, being licensed real estate brokers, are subject to discipline by the Regulated Industries Complaints Office. Violation of Chapter 514B can subject a licensee to disciplinary action;³⁷ so administrative remedies are also available to facilitate transparency.

B. Pet projects

Board approval of someone's pet project means that at least a majority of a quorum of the Board supported the project. If that seems abusive, the political process itself is available to check moves in an unpopular direction, even in the absence of a specific violation of law or of the governing documents.

Owners have input into Board conduct. Owners can attend and participate in Board meetings. Executive sessions are allowed only for prescribed reasons.³⁸

Board conduct that breaches fiduciary duty is an abuse of power. Board conduct that is merely unpopular with a minority of owners is not. The adage that elections have consequences applies to condominiums.

C. Election rigging

"But the election was rigged!" A common complaint is that the election is allegedly rigged because proxy voting is authorized by statute and Boards often hold many owner proxies.

Owners choose whether to give a proxy. They can choose to ignore the meeting or attend it and vote in person instead. Owners also choose the proxy holder if a proxy is given.

Standard proxy forms authorized by the association must contain boxes indicating whether the proxy is to be used for quorum purposes only, given to a named individual, or given to the Board. Owners giving a proxy to a Board can further choose that the proxy be voted based on the preference of the majority of the directors present at the meeting or, alternatively, voted by each director receiving an equal share of the proxy.³⁹

A Board that intends to use common funds to solicit proxies must post notice of the intent to do so at least 21 days before making the solicitation and must then include the solicitations or statements of owners who timely request to be included. Board members seeking proxies individually are bound by the same limitations as other owners.⁴⁰ Owners are also free to solicit proxies at personal expense and they are entitled to request a list of owners for the purpose.

It is true that political action requires the investment of time, effort and money. Owners who want change must mount a campaign.

The argument that owners should not be allowed to give proxies to incumbents has been made to, but not adopted by, the legislature. Owners are free to consciously support or to passively accept the choices made by incumbents.

Some claims of vote rigging, then, merely reflect the frustration of those who have lost elections.

The legitimate question is whether condominium elections have integrity. Condominium vote fraud is possible. It is not probable.

Votes are usually tallied in the open by tally clerks employed by the managing agent. The tally clerks are usually watched by election tellers who are association members. It is the tellers who certify the election results.

Association members are entitled to examine proxies, tally sheets, ballots, owner check-in lists, and the certificate of election after the meeting at which the election takes place so that challenges can be made.⁴¹ Examination requests are not uncommon, particularly at projects that are politically divided.

D. General misconduct

There can still be the matter of a Board's general failure, negligence or refusal to comply with legal or contractual requirements. Board members who breach fiduciary duty run risks because Chapter 514B expressly provides that "[a]ny right or obligation declared by this chapter is enforceable by judicial pro-ceeding."⁴²

VIII. Remedies for the abuse of power

A fundamental aspect of the critique of self-governance is that the remedies for the abuse of power are inadequate. Boards have money, power, and counsel. Owners must pursue remedies at personal expense and risk.

The condominium czar model would be one in which owners need only complain to government. Government would investigate, advocate for the complainant, and adjudicate outcomes.

There is an obvious question about whether government should choose sides in a civil dispute involving privately owned real estate. Another obvious question is whether government should both advocate for one side to the dispute and adjudicate the outcome as well.

Remedies do exist under current law. In addition to criminal and administrative remedies to vindicate the rights of the public, available private remedies include mediation, arbitration, litigation, and taking political action.

A. Mediation

Condominium law mandates the mediation of most condominium disputes, upon request.⁴³ The cost of professional mediation services is subsidized⁴⁴ because of an industry-sponsored initiative.

Moreover, subsidized mediation is intended to be evaluative. Thus, the mediator can do more than facilitate process. The mediator can provide guidance.

One complaint about mediation is that Boards bring counsel. Fiduciary duty generally obliges a condominium Board to address legal disputes through

counsel. Nothing prevents owners from bringing counsel to mediation, apart from the cost of doing so.

Mediation is an affordable and available non-binding alternative dispute resolution mechanism. The frankly evaluative nature of subsidized condominium mediation is such that even unrepresented parties may benefit from participation.

B. Arbitration

Condominium law also mandates the arbitration of most condominium disputes, upon request.⁴⁵ Condominium arbitration awards can be rejected in favor of trial de novo, but the party who rejects the award and does not then prevail at trial will be assessed the fees and costs of the trial.⁴⁶ There is, therefore, a significant incentive to accept the arbitration award.

C. Litigation

Grievances can always be presented to the courts. As with the exercise of civil remedies in other contexts, litigating condominium claims requires effort, takes time, and costs money. The prevailing party in a condominium dispute is entitled to reasonable attorneys' fees and costs; so owners with meritorious claims should be able to retain counsel.⁴⁷ Of course, the owner must be able to afford counsel in the first instance and must bear the risk of loss.

D. Political action

The removal of offending directors and the election of new directors can remedy abuses of power. This remedy requires political action.

IX. The missing piece

The piece that is perceived to be missing in the remedial scheme is a remedy that does not entail risk or effort.

That missing piece must be understood to relate solely to the exercise of private civil remedies regarding privately owned real property, because the Commission already has substantial statutory and rulemaking authority to vindicate the public interest.⁴⁸ Laws of general application can be passed during annual legislative sessions as well.

It is the private grievances of individual condominium owners that owners must pursue on their own. The justification for government action in favor of one party to a private condominium dispute has yet to be established.

X. Recent legislative action

Legislative action in 2017 included targeted responses to several specific complaints about condominium governance. The repeal of Chapter 514A has already been noted.

Act 190 prohibits retaliation against persons who act lawfully to address, prevent or stop a violation of Chapter 514B or an association's governing documents. State district courts have jurisdiction over this new cause of action and may enjoin retaliatory conduct, award damages, or grant other relief that the court deems to be appropriate. As defined in Act 190:

"Retaliate" means to take any action that is not made in good faith and is unsupported by the association's governing documents or applicable law and that is intended to, or has the effect of, being prejudicial in the exercise or enjoyment of any person's substantial rights under this chapter or the association's governing documents.

The cause of action works both ways. Board members and others who retaliate against owners are at risk. Owners who retaliate against Board members and others are also at risk.

Act 81 addresses multiple concerns. The concern that some Boards might resist participation in mandatory mediation or arbitration is addressed by providing that such resistance may be deemed to be a breach of fiduciary duty. The adoption of owner participation rules for Board meetings is provided for to ensure that owners can participate in deliberations and discussions of Board business. Agendas must now include expected items of business. An affirmative vote, rather than mere "approval," is required to go into executive session. Draft minutes must be available within thirty rather than sixty days.

Act 71 provides (among other things) for the disclosure of an on-site manager's contract. The redaction of certain personal information is allowed. This resolves tension between the call for disclosure and the employee's right to privacy.

XI. Democracy versus autocracy

There is a reasonable basis for suggesting that condominium self-governance is viable. Hawaii condominiums have governed themselves for more than half a century, and the condominium form of ownership has steadily grown over that period.⁴⁹

Even so, the *number* of unhappy condominium owners may increase as more condominiums are built, regardless of whether the *percentage* of unhappy owners remains relatively constant. The condominium czar proposal is an indication that the mass of unhappy owners has become politically significant.

To do the greatest good for the greatest number of people, though, legislators may wish to base policy on objective facts discerned through reasonable and responsible investigation involving all stakeholders in an open process. That is how Chapter 514B was developed. No comparable process has been proposed to undo condominium self-governance.

Notes:

¹ State of Hawaii, Dep't. of Bus., Econ. Dev. & Tourism, State of Hawaii Data Book 2016 ("Data Book"), Table 21.10, (<http://dbedt.hawaii.gov/economic/databook/>).

² Compare *id.* with Data Book Table 21.20.

³ *Lee v. Puamana Community Association*, 109 Hawaii 561, 128 P.3d 874, 888 (2006).

⁴ Final Report at 5.

⁵ *Id.* at 1.

⁶ Haw. Rev. Stat. § 514B-4.

⁷ Haw. Rev. Stat. § 514B-3.

⁸ Haw. Rev. Stat. § 514B-51.

⁹ Haw. Rev. Stat. § 514B-82.

¹⁰ Haw. Rev. Stat. § 514B-102(b).

¹¹ Haw. Rev. Stat. §§ 514B-105 and 514B-106.

¹² Final Report at 7-8.

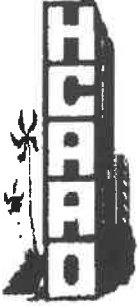
¹³ Jasmine Martirossian, *Decision Making in Communities*, 3, (Debra H. Lewin, ed. 2001).

¹⁴ Haw. Rev. Stat. § 514B-41(a).

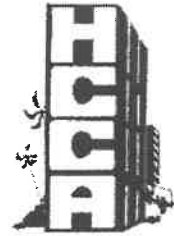
15. Haw. Rev. Stat. § 514B-3.
16. Haw. Rev. Stat. §§ 514B-144(a) and 514B-106(c).
17. Haw. Rev. Stat. § 514B-143.
18. Haw. Rev. Stat. § 514B-148.
19. Haw. Rev. Stat. § 514B-105.
20. Haw. Rev. Stat. § 514B-132(c).
21. See, e.g., Haw. Rev. Stat. § 414D-149.
22. John Berger, *And Our Faces, My Heart, Brief as Photos*, 51, (1st Vintage International ed. 1984).
23. Haw. Rev. Stat. § 514B-106(f).
24. Haw. Rev. Stat. § 514B-32 (Declaration) and § 514B-108 (Bylaws).
25. *Lee*, 128 P.3d at 883-4.
26. Haw. Rev. Stat. § 414D-52 and §429-4.
27. Any Mental Illness (AMI) Among U.S. Adults, <https://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-us-adults.shtml> (last visited September 9, 2017).
28. How Sweet HOA: A survey of satisfaction of community association living. Statement of Survey Integrity. CAI ("Statement of Survey Integrity").
29. <https://foundation.caionline.org/wp-content/uploads/2017/06/2016NationalHomeownerSurvey.pdf> (last visited September 9, 2017).
30. Hawaii Community Associations facts & figures, CAI, <https://www.caionline.org/Advocacy/Resources/Pages/State-Facts-Figures.aspx> (last visited September 9, 2017).
31. Statement of Survey Integrity.
32. Public Corruption, <https://www.fbi.gov/investigate/public-corruption> (last visited September 9, 2017).
33. Haw. Rev. Stat. § 514B-149(f).
34. See eCourt Kookua case ID 1PC151000250, <http://jimspssl.courts.state.hi.us:8080/eCourt/ECC/CaseSearch.iface> (last visited September 9, 2017).

35. Haw. Rev. Stat. § 514B-150.
36. Haw. Rev. Stat. § 514B-154.5.
37. Haw. Rev. Stat. § 467-14.
38. Haw. Rev. Stat. § 514B-125.
39. Haw. Rev. Stat. § 514B-123.
40. *Id.*
41. Haw. Rev. Stat. § 514B-154.
42. Haw. Rev. Stat. § 514B-10(c).
43. Haw. Rev. Stat. § 514B-161.
44. Haw. Rev. Stat. § 514B-72.
45. Haw. Rev. Stat. § 514B-162.
46. Haw. Rev. Stat. § 514B-163.
47. Haw. Rev. Stat. § 514B-157.
48. Haw. Rev. Stat. §§ 514B-65 to 514B-69.
49. Table 21.10, Data Book.

Philip S. Nerney has represented community associations since 1990. He is a co-chair of the Community Associations Institute's Legislative Action Committee (Hawaii Chapter).



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



February 21, 2024

Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice-Chair
House Committee on Judiciary & Hawaiian Affairs

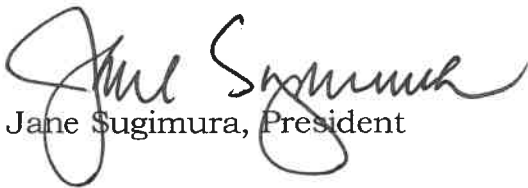
Re: Testimony in Partial Opposition to HB 2067 Re Condominiums
Hearing: Friday, February 23, 2024, 2 p.m., Conf. Rm. #325

Chair Tarnas and Vice-Chair Takayama and Members of the Committee:

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

HCCA opposes the deletions being proposed to HRS Section 514B-123 that would deprive apartment owners of the right to give their proxies to the board or to the directors on the grounds that there is no good reason to eliminate the board majority requirement on standard association proxies. HCAAO takes no position regarding the insertion of a new requirement relating to a disclosure statement that the association may conduct direct elections by electronic, machine or mail voting.

Thank you for the opportunity to testify on this matter.


Jane Sugimura, President

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

Honorable David A. Tarnas
Honorable Gregg Takayama
Committee on Judiciary & Hawaiian Affairs
415 S. Beretania St.
Honolulu, HI 96813

Re: HB 2067 HD1 - Oppose

Dear Chair Tarnas, 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 homeowners, directors, managers and business partners of community associations.

For the following reasons, CAI opposes HB 2067 HD1.

A. Clarification Regarding the Process of Distributing and Soliciting Proxies

As a preliminary matter, this bill appears to be based on the misunderstanding that there is "unequal footing" when proxies are distributed. A lay person looking only at HB 2607 HD1 may think that all that is sent out is a form asking owners to either give their proxy to the board or to write in a name; however, that is not the case.

What really happens is that under HRS § 514B-123(i), the board sends out a packet containing the following:

- 1) A proxy form;
- 2) A list of owners who would like to solicit proxies and have requested to be included with the mailing (either included in the form or in an attached list); and

- 3) A one-page statement from each owner who has requested to be included, where they may explain their qualifications and reasons for wanting to receive proxies.

Owners are fully informed, and individuals who would like to solicit proxies have the advantage of including a one-page statement of their qualifications. This procedure was put into place so that there would be an equal footing when proxies were distributed and solicited.

As explained below, what this bill actually does is to concentrate power in a single individual instead of spreading it across a board of owners.

B. This Measure Would Allow Too Much of a Concentration of Power in One Individual

The concentration of power in one individual is to be avoided.

HB 2067 HD1 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. Owners complained to the legislature that it unfairly concentrated power with a single individual, so the two board boxes were eventually incorporated into the law.

The purpose of the two provisions allowing proxies to be given to the board was to avoid the concentration of power in one individual.

Under the current system, with these two choices as part of the standard form, owners who do not know their neighbors, can hedge against the risk of their votes being used for imprudent measures by spreading out their votes over an entire board.

HB 2067 HD1 threatens to take that option away by removing the two board provisions from the standard proxy form. The net effect of this bill is to concentrate power into the hands of the owner(s) who solicit the most proxies, regardless of what their intentions are.

//

C. Deleting These Provisions Would Deprive Many Owners of an Opportunity to be Heard

An owner who trusts the board should not be deprived of the choice to give their proxy to the board.

The reality is that unit owners may not know many of their neighbors, and many other owners live offsite. For these owners, giving their vote to the board is a reasonable choice to have. As stated above, it gives owners the peace of mind of spreading their votes among multiple individuals, hedging against the risk of their votes being used for imprudent measures.

If these owners think their board is competent, then they should be able to give their proxy to the board. If they think their board is not competent, then they also have the choice not to give their proxy to the board.

D. The Disclosure Regarding Mail Voting Will Confuse Voters in Associations that Have not Amended Their Bylaws to Accommodate Such Elections

The purpose of requiring a disclosure that an association may conduct elections by electronic and mail voting is unclear. However, in any event, it would be confusing to owners in Associations that have not amended their bylaws to accommodate such elections.

Although under HRS § 514B-121(e), the board may authorize voting by electronic means or by mail, most bylaws still require that nominations be made from the floor. Those associations that have mail or electronic elections have amended their bylaws 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.

The practical reality is that the electronic voting disclosure will confuse people in Associations not set up for that and it could cause problematic elections where everyone must be written in.

//

Honorable David A. Tarnas
Honorable Gregg Takayama
February 21, 2024
Page 4

Thank you for attention to these issues. For the reasons above,
CAI respectfully opposes SB 2067 HD1.

Very truly yours,

/s/ Dallas H. Walker

Dallas H. Walker, Esq.
Community Associations
Institute, Hawaii Chapter
Legislative Action Committee



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

February 22, 2024

Honorable Rep. David A. Tarnas, Chair
Honorable Rep. Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs (JHA)
Hawaii State Capitol, Room 329
415 South Beretania Street
Honolulu, HI 96813

**RE: Testimony in OPPOSITION to HB2067 HD1; Hearing Date: February 23, 2024
at 2:00 p.m. in House Comm. conference room 325/videoconference; sent via
Internet**

Dear Rep. David A. Tarnas, Chair, Rep. Gregg Takayama, Vice Chair, and Committee Members:

Thank you for the opportunity to provide testimony on this bill. I'm currently uncertain whether I can appear at the hearing because coincidentally I'm off island at a board removal proceeding where owners chose NOT to give proxies to their board (which indicates that owners understand the four boxes currently found on standard proxy forms and know how to use them).

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 this organization's collective experiences with the bylaws and meetings of numerous condominiums, cooperatives, and planned community associations.

This testimony is presented in OPPOSITION to HB2067 HD1.

Summary of Bill:

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

- A. It proposes to **eliminate an owner's choice** to give their vote to a "board majority" or "board equal" in condominium meetings absent a compelling reason to do so and notwithstanding the right of owners in Hawaii to do for over 30 years.

- B. This change will **affect thousands** of condominium associations comprised of at least 245,467 members (statistics are from 2019 and have increased) who have relied on stable proxy legislation since the 1980s.
- C. The bill provides a **confusing requirement** for standard proxy forms with respect to direct elections 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.

Under the existing statute, condominium owners have choices. Association proxy forms must give owners the choice to select:

- (a) the board majority, based on the decision of a majority of directors present at the meeting ("board majority"),
- (b) board members equally, based on those present at a meeting ("board equal"),
- (c) any individual, or
- (d) use for establishing quorum only.

Further, owners have choices, such as directing a proxy to be used for voting for specific individuals, voting yes/no on certain issues, etc. Owners always have the option not to submit a proxy.

Obviously, owners who wish to attend in person can go to the meeting or revoke their proxy as provided by the law. (Irrevocable proxies are not permitted unless coupled with a financial interest in the unit.)

B. MEETING STATISTICS

Statistics:

We've contacted 3 large property management companies regarding the use of board majority and board equal proxies. We promised to report only total statistics for January and February without identifying the associations.

We received a list totaling 127 association meetings for January and February representing about 15,566 units.

We analyzed the data on all proxies received before the respective association meetings to determine which ones would have had a quorum based solely on the proxies.

Approximately 67 of the 127 meetings had a pre-meeting quorum. (As used in this letter, “pre-meeting quorum” means that before the meeting, proxies were received from owners of units to which were appurtenant a common interest sufficient to meet the quorum requirements for the association meeting.) This meant that there was a good chance the respective associations could (a) have an election and (b) adopt the tax resolution to avoid paying taxes on excess member income.

Out of these 67 associations, 59 of them or 88% would not have had a pre-meeting quorum without the board majority and board equal proxies.

This information is invaluable because it shows that changes to the proxy form requirements that HB2067 HD1 is attempting to achieve will probably impair the operation of many associations. We plan on publishing more details statewide assuming we get the appropriate approvals and maintain confidentiality.

The failure of an association to achieve quorum can be expensive, leading to the continuation of the meeting or an adjournment without a change in board membership or the adoption of the tax resolution. Multiple meetings and mailouts are costly and some associations are unwilling to undergo the additional expense.

C. FAILURE TO ACHIEVE QUORUM

If HB2067 HD1 results in no quorum meetings, existing boards will remain in power if the meetings are simply adjourned.

While certainly not the norm, we know of a few boards that have used owner apathy to remain in office. We also know of board members who want to get off the board and are frustrated by a lack of quorum.

In most associations, board members continue in office until a successor is elected.

This is different from government elections where an elected official's term has a defined termination date. (Bylaws that state that a director shall continue to serve until a successor is elected were drafted with the foresight that without such a provision, the association may be left leaderless (i.e., without directors) if a quorum cannot be achieved or no director receives the requisite vote to be elected).

From a parliamentary perspective, a condominium association meeting that is:

- (a) called to order, and
- (b) adjourns because of a lack of a quorum

is still a meeting. It has satisfied the requirement for a meeting once a year.

There are also prospective federal tax consequences. **My understanding is that IRS Revenue Ruling 70-604 provides that associations must annually adopt a tax resolution to avoid taxation on excess member income.**

We know of at least one association in Kaanapali, Maui that was audited and had to produce proof that they properly adopted the tax resolutions.

D. RISKS OF UNINTENDED CONSEQUENCES

We believe that the proponents of HB2067 are individuals who have had issues being elected to or remaining on their condominium boards. They may not realize the purpose of the required board majority and board equal boxes on proxies. Before the legislature required proxies to contain the board majority and board equal boxes, unit owners tended to give their proxies to the association president, resulting in the concentration of voting power in association presidents.

Removing the requirement for board majority and board equal boxes on proxies will probably cause the same problems that the two boxes were intended to solve many years ago, i.e., concentration of voting power.

E. PRO-CHOICE

Research from previous years has shown a substantial legislative rejection of measures that interfere with owners' choices. This was previously outlined in testimony before the CPC on HB2067. The effect of HB2067 HD1, to remove the requirements that proxies include board majority and board equal boxes, will interfere with owners' choices.

We urge the legislature to preserve and protect owners' choices.

F. DISCLOSURE STATEMENT/ELECTION

HB2067 HD1 Section 1 on page 2, lines 9-13 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."

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.

However, the statement of this nature in the bill is 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).

The wording gets even more confusing if there is some sort of electronic or mail voting and

a subsequent vacancy occurs on the board. Based on current law, the vacancy would be filled at the association meeting. This “disclosure” language only adds to the confusion.

G. SUMMARY

Our position:

- The use of proxies has proved to be an important part of the association quorum and meeting process.
- Under HRS §514B-123, the required proxy form gives owners the option to give their votes to their board of directors in multiple ways, or to any other individual to represent their interests.
- HRS §514B-123 prevents voting power from being concentrated in individual directors, often association presidents.
- Owners may limit their proxies as they desire, pursuant to HRS §514B-123.
- An owner cannot be forced to turn in a proxy.

There is no valid reason to radically change the proxy requirements or micromanage ownership meetings. All condominium associations in our experience provide for proxies in their governing documents. The bill, if it becomes law, would make these bylaw provisions inconsistent with the law. This would require legal assistance for associations that wish to have their bylaws comply with the law.

This bill, if it becomes law, will affect almost 2,000 condominium associations, comprised of at least 245,467 members, who have relied on stable proxy legislation, developed over many decades, by radically changing the requirements for proxy forms.

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

**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. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice Chair
Comm. on Judiciary & Hawaiian Affairs

Friday, February 23, 2024
2:00 PM, Room 325 Via Videoconference

RE: **HB2067 HD1** Limit Proxy Form - **Support**

Dear Chair Tarnas, Vice Chair Takayama & 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 HD1, 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. This imbalance of power may marginalize condo owners who pay close attention to what the board is doing; it may make it easier for them to be out-numbered by sitting board members who may be invested into holding on to power at the expense of a high-functioning board.

Yours is the only House committee charged with protecting consumers. HB2067 HD1 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.



DISTRICT 25 COUNCIL

Ala Moana
Kakaako
Downtown

District
Council
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Osa Tui, Jr.
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Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice Chair
Comm. on Judiciary & Hawaiian Affairs

Friday, February 23, 2024
2:00 PM, Room 325 Via Videoconference

RE: **HB2067 HD1** Limit Proxy Form - **Support**

Dear Chair Tarnas, Vice Chair Takayama & Committee Members,

On November 21, 2023, District 25 Council of the Democratic Party of Hawaii, held an open meeting via zoom that was publicized to all registered democrats residing in District 25. Upon unanimous vote of all those in attendance, we determined that Consumer Protections for Condo Owners would be one of our district council's Top 5 Legislative Priorities for the 2024 Legislative Session.

We specifically determined to support those measures included in the Ala Moana - Kakaako Neighborhood Board Resolution Supporting Consumer Protection Bills for Condo Owners. (Please see attached copy below; note that it was adopted unanimously.) The resolutions specifically asks the legislature to pass bills that will "Eliminate voting by proxy and allow only in-person or mail-in ballot voting." Although HD2067 HD1 does not eliminate the use of proxy voting completely, it does limit the use sufficiently to bring greater fairness in voting.

Almost half of all registered voters in District 25 are condo owners and they are paying very close attention to bills that may affect, what may be, their most valuable asset. Residents in our district received campaign mailers that educated them about the legislative process; so they know that legislative leaders can publicly support a bill, and simultaneously use their power to kill that same bill behind the scenes. So condo owners in District 25 are looking to see if their elected officials are sincere in using their influence as legislative leaders to enact laws that protect condo owners.



ALA MOANA-KAKA'AKO NEIGHBORHOOD BOARD NO. 11

c/o NEIGHBORHOOD COMMISSION 925 DILLINGHAM BOULEVARD, SUITE 160 - HONOLULU, HAWAII,
96817 PHONE (808) 768-3710 FAX (808) 768-3711 INTERNET <http://www.honolulu.gov/nco>

RESOLUTION SUPPORTING CONSUMER PROTECTION BILLS FOR CONDO OWNERS

WHEREAS, the establishment of a condominium ombudsman has been proposed to aid in the resolution of condominium related disputes; and

WHEREAS, the Real Estate Branch of the Department of Commerce and Consumer Affairs (DCCA) is not providing the necessary assistance to help resolve disputes and concerns regarding violations of Hawaii Revised Statutes 514B, and the Regulated Industries Complaints Office (RICO) has very limited jurisdiction to assist and often closes cases with no findings, even with evidence of violations presented; and

WHEREAS, the Real Estate Branch of the DCCA has been required since 2013 to use the condominium education trust fund (CETF) to support mediation of condominium related disputes pursuant to Hawaii Revised Statute 514B-71, section (a)(4); and

WHEREAS, in 2018, the Real Estate Commission expanded the use of the condominium education trust fund to support voluntary binding arbitration; and

WHEREAS, mediation and arbitration has proven to be costly to homeowners and associations, but profitable for the attorneys and association management companies hired by the associations; and

WHEREAS, to eliminate the shortcomings and increase the effectiveness and accessibility of alternative dispute resolution at little to no additional cost to condominium owners and associations; and

WHEREAS, proxy voting unfairly benefits the incumbent association directors and managers who maintain restricted access to phone numbers and email addresses for each homeowner; and

WHEREAS, proxy voting has been confusing and ambiguous to owners who prefer to vote on their own, but are unable to attend their association elections; and

WHEREAS, each property management company is required to have one licensed real estate broker on staff, yet there is no licensure requirement for association community managers who are responsible for billions of dollars of real estate, and compliance with laws, rules, and professional standards; and

WHEREAS, the 2021 collapse of the Florida condominium, Champlain Towers South, exemplified the significant need for community association managers and board directors to know and fulfill their fiduciary duties to condo owners through the understanding of HRS 514B and their associations' governing documents; and

WHEREAS, documents reporting investigation and consultation studies of an association's buildings and infrastructure should be availed to all owners for their health and safety; and

WHEREAS, other association documents pertinent to and necessary for good governance should be availed to all owners in keeping with the theory that associations should be self-governed and self-regulated as intended by HRS 514B; so

NOW THEREFORE BE IT RESOLVED, that the Ala Moana-Kaka'ako Neighborhood Board No. 11 supports the passage of legislative bills that include the following solutions:

- Create a State Ombudsman Office to efficiently resolve complaints from homeowners and associations when laws and rules are not followed;
- Eliminate voting by proxy and allow only in-person or mail-in ballot voting;
- Increase transparency and homeowner access to association documents by increasing frequency of filing, quickening wait time, and broadening which documents are to be filed automatically, and by reducing the burdensome cost of electronic documents and extending owners free access to their association documents;

- Mandate licensure of association community managers to verify competency and ensure accountability and compliance with rules, laws, and professional standards; and
- Mandate educational requirements for association directors and community managers, to ensure they are prepared to properly fulfill their fiduciary, managerial, financial, and legal responsibilities to the association and the homeowners they serve.

BE IT FURTHER RESOLVED, that copies of this signed resolution be sent to all Hawaii Legislators.

This Resolution was adopted by the Ala Moana/Kaka'ako Neighborhood Board No. 11 by Unanimous Consent on Tuesday, February 28, 2023. (9-0-0) (AYE: Chee, Farinas, Lee, Zehner, Rice, Mariano, Chung, Nam, Faringer. NAY: None. ABSTAIN: None.)

Signed by Kathleen Lee, NB11 Chair

Date: 2/28/23

X  _____

HB-2067-HD-1

Submitted on: 2/22/2024 8:33:52 AM

Testimony for JHA on 2/23/2024 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 Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

H.B. 2067, HD1 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). If a statement of this nature must be added (even though it is not needed), it should be reworded to state that all standard proxy forms shall include a disclosure statement informing unit owners that elections may be conducted by electronic, machine, or mail voting subject to the provisions of 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, HD1 and urge the committee to defer it.

Respectfully submitted,

Mark McKellar

HONOKOWAI EAST



I OPPOSE H.B. 2067, HD1 for the following reasons:

The committee proposing this legislation placed the effective date as July 1, 3000, which is nonsensical. Passing a law that will not come into effect for more than 76 years makes no sense whatsoever and certainly does not permit further evaluation and comment.

The committee proposing this radical change in existing law cites no rationale for it being proposed.

The proposed deletions from the proxy will not likely change proxies since most AOAOs have bylaws which incorporated the existing law back to HRS 514A-83.2(C) and more recently HRS 514B-121. Consequently, most condominium associations will not amend their bylaws to comport with this law change and continue with the historic boxes and choices.

Not changing the law lends itself to more continuity with boards if proxy statements opt to keep their board or allow board members present to make that decision.

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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concern about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

H.B. 2067, HD1 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). If a statement of this nature must be added (even though it is not needed), it should be reworded to state that all standard proxy forms shall include a disclosure statement informing unit owners that elections may be conducted by electronic, machine, or mail voting subject to the provisions of 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, HD1 and urge the committee to defer it.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized initial 'L' followed by a horizontal line extending to the right.

Leland Eugene Backus
President
Honokowai East AOA

HB-2067-HD-1

Submitted on: 2/21/2024 8:34:30 PM

Testimony for JHA on 2/23/2024 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 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. 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 greatly struggle to get a quorum. Or they will all give me alone their proxies since I am the usual board member they all reach out to - I don't want or need this voting power just to myself. I prefer to have the voting power in the hands of those that attend or split amongst the board members or their majority.

Please also keep in mind that if annual meetings have no quorum, the same boards stay in office.

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 may not be applicable to all associations and may cause confusion and aggravation when owners find out they are not allowed to do it.

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

Mahalo for your time,

Rachel Glanstein

HB-2067-HD-1

Submitted on: 2/21/2024 3:43:36 PM

Testimony for JHA on 2/23/2024 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 strongly 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.

Without a quorum there is no meeting. The board will remain in office. Without a quorum the owners cannot obtain a tax resolution and as a result the IRS may require associations to pay tax on income that would not otherwise be taxable.

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

HB-2067-HD-1

Submitted on: 2/22/2024 9:45:06 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Hawaii First Realty LLC	Oppose	Written Testimony Only

Comments:

I am not sure why government thinks it has the right to interfere with the governance of private organizations. If the Owners wanted such changes, they have the power to amend their own documents at a meeting. They do not need government to do so.

Proxies choices are made voluntarily and with free choice by the Owner. They have been around in organizations for a thousand years. The results of this Bill will make it more difficult and expensive to conduct meetings by effecting quorum and creating more individual proxy battles thus having more power in a single individual. More times than not, Owners do not know the candidates and if happy rely on the Board.

I see no good in this Bill and Oppose.

HB-2067-HD-1

Submitted on: 2/22/2024 9:47:47 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lowell Schmidt	Hale Kai O'Kihei AOA	Oppose	Written Testimony Only

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

1. 2067, HD1 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). If a statement of this nature must be added (even though it is not needed), it should be reworded to state that all standard proxy forms shall include a disclosure statement informing unit owners that elections may be conducted by electronic, machine, or mail voting subject to the provisions of 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, HD1 and urge the committee to defer it.

Respectfully submitted,

<Lowell Schmidt

Treasurer HKOK AOA

Sincerely,

HB-2067-HD-1

Submitted on: 2/22/2024 10:00:29 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kanani Kaopua	Hawaiian Properties, Ltd.	Oppose	Written Testimony Only

Comments:

Hawaiian Properties, Ltd. **OPPOSES** HB2067 for the reasons stated by CAI Hawai‘i. Our firm represents over 30,000 units across Oahu and Kona on Hawai‘i Island.

HB-2067-HD-1

Submitted on: 2/22/2024 10:29:39 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jon McKenna	Hawaiiana Management Company, Ltd.	Oppose	Written Testimony Only

Comments:

Owners express confidence in their board by exercising their choice for board majority or board equal. Removing these choices will have a significant impact (~50%) for associations to NOT obtain quorum to hold their meeting thus, no election would take place potentially for many years, meaning the same Board members would remain on the Board.

HB-2067-HD-1

Submitted on: 2/21/2024 7:19:23 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Teena Smart	Individual	Support	Written Testimony Only

Comments:

To Committee Chair, Vice Chair and members,

I support this bill because I live in a condo that needs more transparency and equal opportunity to serve on the condominium board. Our board president chooses replacements for vacancies whose names are then submitted with the proxies as a member already on the board. No other residents' names are allowed to be presented. Owners are not notified that anyone else is interested in serving on the board. Our board does not allow zoom or electronic voting. Two years in a row 3-4 residents offered their names to be voted on but had no chance with only the owners present voting for them,

Thank you for allowing comments.

Dale Arthur Head

1637 Ala Mahina Place Honolulu, HI 96819

Thursday 22 February 2023 sunnymakaha@yahoo.com

To: Chairman David Tarnas, Vice Chair Gregg Takayama & JHA members

Regarding **HB2067 HD1** (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. Effective 7/1/3000. (HD1)

- 1. Aloha:** I STRONGLY SUPPORT passage of this Bill as it will confer unfettered voting rights on Home Owners Association (HOA) members which is now both made 'conditional' (on attending a meeting in person). Please now that certain scheming Managing Agent employees wrongfully assign Proxy/votes onto candidates for election who most owners **DO NOT** support. This is a scam driven by profits, is anti-democratic, and is just one sinew of corruption in our Capitol.
- 2.** I stood before House CPC and JUD committees in **2019** asking for approval of a similar Bill where it passed and 'crossed over' to Senate CPN. There it was killed by their Committee Chair who refused to give it a Hearing, **after**, having received donations for many years from an Aiea attorney who spent decades speaking against full voting rights. Those who oppose unfettered voting for HOA members (who are taxpayers) never reveal their own 'conflict of interest' by receiving income from property management companies with HOA clients, or, that they likely received 'Proxy/votes' bestowed on them by an unlicensed employee of the firm. People who may assume Board members know what is going on have no clue. They are never ever informed how proxies are often misused to keep in power Board members who have less support than other candidates who are wrongfully denied a 'seat'. This 'business model' creates a 'puppet Board' with most of its members loyal to the manager. So it goes, year after year, decade after decade.
- 3.** In both **2018** and **2019** I performed forensic examination, post election, of assigned proxies to discover how the scam was perpetrated. My questioning the Property Manager as to 'why' he did it, went unanswered. Sent off a letter to the company President who did not respond, of course. Due to unstoppable corruption from three different commercial companies, I sold my place after residing there for about three and one half decades. I am now age **75** and fed up with Capitol corruption.
- 4.** Please pass **HB2067 HD1**. **Defend democracy!!**

Sincerely, *Dale Arthur Head*

Lourdes Scheibert
920 Ward Avenue
Honolulu, HI 96814

February 21, 2024

The Honorable Representative David A Tarnas, Chair
Judiciary & Hawaiian Affairs
415 South Beretania Street, Room 325
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 Tarnas and members of the Committee,

My testimony in the form of a Community Voice Civil Beat letter, which was published on February 20, 2024. This letter serves as a representation of the unified voice of many condo owners who are yearning to have their voices heard. By submitting this letter, my aim is to safeguard its content and inspire education among all who come across it.

CIVIL BEAT COMMUNITY VOICE

As a resident and condominium owner in the Kakaako district, I am a constituent of Speaker of the House Scott Saiki and state Sen. Sharon Moriwaki.

In 2019, I wrote to Civil Beat “An Open Letter to Hawaii Condo Owners About Proxies.” Each year thereafter I returned to the Legislature to request the support of Speaker Saiki to introduce proposals to amend condo law, Hawaii Revised Statutes 514B.

In the current legislative session, House Bill 2067 was amended and proposes to “Remove [s] 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.”

Senate Bill 2404, a similar proposal, was amended to remove the proxy assignment to “the board as a whole,” and it, too, survives.

During my investigation into the introduction of new proxy choices to condominium law HRS 514B, I have some interesting findings. However, it is crucial to emphasize the importance of comprehending cumulative voting.

First, it's helpful to understand that most associations are nonprofit corporations in Hawaii. Condo owners are stockholders and the amount of stock each owner holds varies based on their ownership interests; each owner owns a percentage of the common interests of the condominium.

In the initial development of condominium documents, cumulative voting by stockholders was introduced alongside proxy voting for board elections. 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.

National Resources

The Community Association Institute is a national organization that claims to represent associations and their members. A key component of their organization is their Legislative Action Committee.

According to their website, legislative action committees work to monitor state legislation, educate lawmakers, and protect the interests of those living and working in community associations.

Each LAC is comprised of homeowner leaders, community managers, and representatives from community association business partners who they say, "graciously volunteer their time."

Because owners may not be present to vote in their association's elections, condominium associations allow owners to assign their voting rights to a proxy holder who votes on their behalf. The standard proxy used by most associations allows an owner to assign voting rights to an individual, or to "the board as a whole," or to be divided equally among board members who are present at the meeting, or to be considered only for establishing the quorum.

Despite evidence that proxies may be misused, Hawaii's CAI-LAC opposes deleting the proxy options assigning proxies to the board as a whole or to be shared equally among directors present at the meeting. The inclusion of these two options for voting by proxy, 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 recognition of the danger of these two options was introduced to the Legislature in 1984 through the testimony of Richard Port, former chair of the Democratic Party of Hawaii. In his written statement, he articulated, "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."

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.

Classes on HRS 514B caution board members against deferring maintenance. The practice of intentionally keeping the reserves at artificially low levels has resulted in owners, especially seniors and others on fixed incomes, bearing the financial burden of repairing and replacing building components through large financial assessments that should not have occurred if directors had to prove their diligence through unweighted elections.

Please support the deletion of the proxy options that give incumbent boards the ability to reelect themselves despite their failure to upkeep maintenance and to protect owners' most valuable asset, their homes.

Sincerely,
Lourdes Scheibert

HB-2067-HD-1

Submitted on: 2/21/2024 1:49:45 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sandie Wong	Individual	Oppose	Remotely Via Zoom

Comments:

I am a condo owner and resident and I strongly oppose this bill. As a condo owner I should have the option to give my proxy to the Board, therefore the two boxes that allow me to do that should not be removed. If owners choose not to give their proxy to the Board, they should simply not check off the boxes giving it to the Board. Basically, this bill removes my right as a condo owner to give my proxy to the Board. Also, by removing these boxes it will be more difficult to establish quorum. Thank you.

**House of Representatives
Thirty Second Legislature
Committee on Judiciary & Hawaiian Affairs
Friday, February 23, 2024
2:00 p.m.**

To: Chair Representative David A. Tarnas
Re: HB 2067 HD 1, Relating to Condominiums

Aloha Chair Tarnas, Vice-Chair Takayama, 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 HD 1.

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 Illinois,³ 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 the claims that proxies offer owners "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.

Contrary to the assertions of proponents of the continued use of proxies, the re-election of incumbent

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>

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 owners' votes have little consequence.

Proponents of the continued use of proxies reveal their preference for disengaged and absent owners as this detachment makes management and counsel's relationships with directors less scrutable.

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, including 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 in strong support of HB 2067 HD 1.

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

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

HB-2067-HD-1

Submitted on: 2/22/2024 9:50:10 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Auwe. We're screwed, big time. The legislature wants to eliminate an owner's choice to select board majority/board equal on a proxy form and 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."

We'll never get a quorum without those two options. No quorum means no meeting. That means no election and the current board remains in office for another year. No meeting means no adoption of the tax resolution, which provides that any excess of membership income over membership expenses for the for the tax year shall be applied against the subsequent tax year member assessments as provided by IRS Revenue Ruling 70-604. At least one condo on Maui is being audited. The IRS wants to see the adopted resolution. If the resolution is not adopted, associations may be required to pay tax on income that would not otherwise be taxable. Gee, maybe we could get the legislators to pay that tax. It's only fair.

No meeting and the owners cannot express their opinions, opinions which could lead to adoption of amendments to the bylaws and declaration.

Why are they doing this to us? Our condos are our homes, they are a big investment. This isn't fair. It's wrong. They haven't considered the unintended consequences. Legislators who own condos will also suffer these consequences. Auwe. Hundreds of thousands of property owners will be hurt. Not right. Who would have thought Hawaii would restrict voting? Shame on you.

HB-2067-HD-1

Submitted on: 2/21/2024 10:15:01 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Aloha! Fully support this bill!

Robert Finley
2222Aloha Drive #704
Waikiki, Hawaii 96815
(808) 923-5482

Hawaii State Legislature
House Committee on Judicial and Hawaiian Affairs
Chair David Tarnas and Committee Members

Re: House Bill 2067

As an individual I OPPOSE this bill.

Without the current Proxy System my condominium association would have difficulty making quorum at our Annual Meeting. So, I join with so many others who oppose this change.

Unlike the larger condominiums our small (36 unit) building with many nonresident owners is having difficulty even filling the 5-member board of directors and due to owners living off property, some on the mainland and overseas, the current proxy system is effective.

As proxies are returned to owners attending the meeting they can still participate in discussions and vote as an individual. Many of our owners are retired and some are not computer literate, should the law allow them to vote online they may not have the equipment or knowledge to be effective.

Mahalo for your consideration in this matter,

Robert Finley

TO: Hawaii State Legislators

FROM: Sheldon S Y Lee

Re: My testimony in support of HB2067

I am in support of this bill concerning proxies and electronic voting at condominiums.

Those who oppose the bill tend to cite the same rules and rationales, instead of actual experience as unit owners.

At our building, the president of our board, an honest and competent CPA, was replaced through proxy voting.

Two other members had resigned because they did not get along with an engineer who moved into the building and got on the board as treasurer.

The treasurer insisted that we undertake costly renovations and partly because he was an engineer, those who resigned were not willing to stand up to him.

I will not mention the other members of the new board, except to say that one of them never attended meetings.

Instead, she phoned in during meetings and agreed with whatever the treasurer and property manager wanted.

I was a minority of one.

The board went on a spending spree, our maintenance fees tripled and about a third of the owners sold their units or were foreclosed on.

Truthfully, before the trouble began, I rarely attended meetings. I was new to condos and the building seemed to be in good hands. Also, I usually worked until night.

Other owners did not attend meetings because they were apathetic or afraid to be "shot down" by the board, as they told me.

In reality, most owners and residents at condominiums do not know each other or the members of their boards.

At our building, owners were not even allowed to share information on the bulletin board in the lobby.

An attorney published an article in the CAI newsletter advising managers and boards to keep minutes of meetings to a minimum.

The minutes of our meetings said next to nothing. They were written by the manager and mailed out months after the meetings were held.

Another supporter of this bill mentioned corruption totaling more than \$300,000 that was found at his condominium.

There is an anti-corruption statute in Hawaii, HRS § 708-880, but condominium owners have little means to enforce it.

Through proxy voting, board members may perpetuate their position on boards indefinitely, with little scrutiny of what they are doing.

This is especially true because many owners are not occupants, including those who live outside of Hawaii.

On the other hand, passage of this bill might compel unit owners to be more active in their associations.

It would also enable them to participate in meetings electronically.

I hope that all of you will become more aware of what is happening at condominiums in Hawaii.

Thank you.

HB-2067-HD-1

Submitted on: 2/21/2024 10:27:45 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cathy Goeggel	Individual	Support	Written Testimony Only

Comments:

This is an issue that deserves the committee's support. Please pass HB2067. Mahalo!

HB-2067-HD-1

Submitted on: 2/21/2024 12:03:56 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
sarah nakajima	Individual	Support	Written Testimony Only

Comments:

For 20 years owning different condos at different points in my life, in all occasions the board president and directors would receive proxies and vote themselves or "special selected persons" by the president/and or board. The owners, especially that show up for the meeting dont have a chance to vote for someone outside the people already preselected by the board. The proxies system NEEDS to be changed. Please help those not on the board. Instances where the president uses community property for his own commercial use driving up HOA fees, getting large building loan with his relationship at the bank vs seeking other options, targeting owners (not on the board) making "new rules" for the dislike/likes of the president. It's awful.

HB-2067-HD-1

Submitted on: 2/21/2024 2:44:00 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacob Nakajima	Individual	Support	Written Testimony Only

Comments:

Aloha,

Having been owner of condominiums in 3 different buildings, helping my parents with their condominiums, and being on several different boards I strongly support this measure.

Being a board member is a thankless and voluntary job. Unfortunately though, there are people that use their position on boards for personal gain, self interest, and bullying of people in the building that do not bend their knees to the desires of the board or certain members. Being in boards and going to many board meetings the worst offenders were the ones to take advantage of the proxy system in place solidifying their power. They were either corrupt, inept, self serving, and or for lack of a better term "power hungry". They could not or cannot be removed due to the current system in place and I believe this law is written targeting that fact. This bill is a necessity to end this gaming of the system that continues to allow the abuse and self enrichment of these corrupt individuals, and I know many that would oppose this legislation are part of that corrupt system. This bill is unfortunately desperately needed.

HB-2067-HD-1

Submitted on: 2/21/2024 5:51:34 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

H.B.2067, HD1 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). If a statement of this nature must be added (even though it is not needed), it should be reworded to state that all standard proxy forms shall include a disclosure statement informing unit owners that elections may be conducted by electronic, machine, or mail voting subject to the provisions of 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, HD1 and urge the committee to defer it.

Respectfully submitted,

Anne Anderson

HB-2067-HD-1

Submitted on: 2/21/2024 5:59:53 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Emil Lim	Individual	Oppose	Written Testimony Only

Comments:

I am an owner occupant of a Honolulu condo. I have also served on a board at another condo. This bill will eliminate the owner's choice to select board majority/board equal on a proxy and 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." Without these two options we will not obtain quorum. No quorum, no meeting. That means we will not be able to vote on the IRS rollover resolution. Without that resolution, the IRS may well make us pay taxes on income that would not otherwise be taxable. The IRS is auditing at least one condo, looking for the resolution.

Please defer this bill.

HB-2067-HD-1

Submitted on: 2/21/2024 6:08:08 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

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For the reasons stated herein I OPPOSE H.B. 2067, HD1 and urge the committee to defer it.

Respectfully submitted,

Mary Freeman

Ewa Beach

HB-2067-HD-1

Submitted on: 2/21/2024 6:22:00 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

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For the reasons stated herein I OPPOSE H.B. 2067, HD1 and urge the committee to defer it.

Respectfully submitted,

Joe Taylor

HB-2067-HD-1

Submitted on: 2/21/2024 6:29:25 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cecelia Chang	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I strongly OPPOSE HB2067.

I have lived in a condo for over three decades.

My condo is the only real property that I own. I previously served on our board and felt it was important that owners be heard and have a "voice." Board decisions affect owners directly.

The right to choose a proxy (whether it's the board as a whole, or the directors present at the meeting, or an individual) is very important to me. The proxy is my voice whenever I have been unable to attend a meeting in person.

HB2067 limits my personal choice, limits my voice.

Please do not limit my right to choose or otherwise interfere with our association's ability to conduct business.

Thank you for your serious consideration.

Respectfully submitted,

Cecelia Chang

February 21, 2024

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

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For the reasons stated herein I OPPOSE H.B. 2067, HD1 and urge the committee to defer it.

Respectfully submitted,

Cheryl Lindley

HB-2067-HD-1

Submitted on: 2/21/2024 8:16:47 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

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For the reasons stated herein I OPPOSE H.B. 2067, HD1 and urge the committee to defer it.

Respectfully submitted,

Primrose K. Leong-Nakamoto

HB-2067-HD-1

Submitted on: 2/21/2024 8:18:07 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

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For the reasons stated herein I OPPOSE H.B. 2067, HD1 and urge the committee to defer it.

Respectfully submitted,

John Toalson

HB-2067-HD-1

Submitted on: 2/21/2024 8:57:56 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

I strongly support HB 2067

. The rogue board members

can easily **secure** their majority by giving

all the proxies that were sent to the "**board as a whole**" to their buddy.

I witnessed it myself.

Thank you.

HB-2067-HD-1

Submitted on: 2/21/2024 9:25:43 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

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For the reasons stated herein I OPPOSE H.B. 2067, HD1 and urge the committee to defer it.

Respectfully submitted,

Julie Wassel

HB-2067-HD-1

Submitted on: 2/21/2024 9:26:07 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Chair Tarnas, Vice Chair Takayama and Members of the Committee on Judiciary and Hawaiian Affairs

I support HB 2067 HD1 Relating to Condominiums.

As a condominium owner in Nuuanu, I feel it is important for Condominium Boards to act responsibly and ethically when determining quorum and conducting Condominium business with proxy votes.

I further feel this bill, by changing the proxy form will help preserve a fair situation for condo owners and their boards.

Thank you for accepting my thoughts on this issue.

Patricia Bilyk

HB-2067-HD-1

Submitted on: 2/21/2024 10:28:15 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Caroline Brimblecombe	Individual	Support	Written Testimony Only

Comments:

My husband and I own a condo in Honolulu and wholeheartedly support HB2067 HD1. We have experienced firsthand the problems of the current system of giving a proxy vote to the board of directors of a condominium association as a whole or to directors present at the meeting. Owners with skills and experience relevant to the successful management of the property have virtually no chance at gaining a seat on the board in our building under the current regime.

The current system of proxy voting is outdated and completely unnecessary - electronic voting, absentee ballots and in-person voting are effective and the norm (electronic voting is widely used in many contexts, e.g. trade unions, tribal government, professional organizations etc). The proxy system is undemocratic and effectively disenfranchises owners, placing too much power in the hands of the current board of a property, especially with so many absentee owners as is the case in Hawai'i.

The changes proposed in HB2067 HD1 are certainly needed to remedy the current system and foster diversity and inclusion on condo boards. The existing system discourages active participation and can serve to prop up vested interests. Those who live in condominiums whether owners or renters deserve to have their property managed in a modern, democratic way which is open and transparent and encourages participation. Hawai'i should follow the lead of other states that have done away with the proxy system (such as Illinois and Arizona). Thank you for the opportunity to comment on this important bill.

Committee on Judiciary & Hawaiian Affairs

Friday, February 23, 2024 @ 2:00 PM

HB 2067 HD1: 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 over 20 years ago by a “Blue Ribbon Committee” 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 (oftentimes controlled by one dominating individual). 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. 20 years ago, the REC predicted that Voting As A Whole would encourage abuse by the trade industry and in my personal experience, this prediction has unfortunately become extremely true.

The trade industry will 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.

The trade industry will also oppose this Bill by saying that every year, a loud disgruntled minority of condo Owners manages to get this Bill introduced and every year, the Legislature defeats its. This is a bad-faith misrepresentation of the past several years. Every year, the Legislature Defers this Bill but they make it clear that it is an area of concern that deserves thoughtful consideration and further discussion. Unfortunately, the trade industry prefers to solve problems by pretending like they do not exist instead of trying to come up with solutions. Do not be persuaded by their misrepresentations.

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 very 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 at the expense of good governance.

Thank you for the opportunity to testify,

Jeff Sadino

HB-2067-HD-1

Submitted on: 2/22/2024 5:23:03 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I **OPPOSE** H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

H.B. 2067, HD1 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). If a statement of this nature must be added (even though it is not needed), it should be reworded to state that all standard proxy forms shall include a disclosure statement informing unit owners that elections may be conducted by electronic, machine, or mail voting subject to the provisions of 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, HD1 and urge the committee to defer it.

Respectfully submitted,

Lance Fujisaki

HB-2067-HD-1

Submitted on: 2/22/2024 7:35:14 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

H.B. 2067, HD1 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). If a statement of this nature must be added (even though it is not needed), it should be reworded to state that all standard proxy forms shall include a disclosure statement informing unit owners that elections may be conducted by electronic, machine, or mail voting subject to the provisions of 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, HD1 and urge the committee to defer it.

Respectfully submitted,

Laura Bearden

HB-2067-HD-1

Submitted on: 2/22/2024 8:08:13 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Eva Calcagno	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill because it takes away the choices of Condominium owners to designate who they want to vote on their behalf. Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This change would also make it almost impossible for many associations to achieve a meeting quorum! Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

Please reject this House Bill. Thank you.

HB-2067-HD-1

Submitted on: 2/22/2024 8:33:34 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

1. 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 the directors who comprise the board. 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.

1. associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

If this bill is passed, it is likely our association will not be able to achieve a quorum. Many of our owners do not know other owners. Assigning their proxy to the board as a whole allows those owners to participate. For these reasons I opposed this bill.

Respectfully Submitted,

Carol Walker

HB-2067-HD-1

Submitted on: 2/22/2024 9:33:57 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Fully support, but please note the recommendation.

Fully support as a means to empower the voice of homeowners, rather than the voice of the Board of Directors, especially when proxies are used to re-elect themselves.

However, recommend that the following provision be amended to show an **and/or condition**: "A disclosure statement informing unit owners that an association may conduct direct elections by electronic, machine, **and/or** mail voting. As used in this paragraph, "mail voting" has the same meaning as in section 514B—12l(e).“ This would make clear that an association has several options it may used individually or in combination for conducting elections. The "or" condition only may be interpreted to mean that the Association could only one one of the options.

HB-2067-HD-1

Submitted on: 2/22/2024 9:48:11 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jonathan Billings	Individual	Oppose	Written Testimony Only

Comments:

Oppose

HB-2067-HD-1

Submitted on: 2/22/2024 10:02:35 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Selkie Khoo	Individual	Oppose	Written Testimony Only

Comments:

Most Owners are happy with their Board and trust the people they elected to represent them. Owners would rather give their proxies to a Board that they trust. By taking these options away would force Owners to give their proxies to someone other than the Board. We believe that providing a proxy to a board allows freedom of choice and diffuses power. The alternative of naming an individual will lead to a concentration of power. People should be allowed to express support for the judgment of current leadership, and harm can accrue by concentrating power in an individual. For those reasons, I OPPOSE this Bill.

HB-2067-HD-1

Submitted on: 2/22/2024 10:07:18 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Diann Karin Lynn	Individual	Support	Written Testimony Only

Comments:

PLEASE SUPPORT HB 2067 TO PROTECT CONDO ASSOCIATION OWNERS' RIGHTS.

Civil Beat carried an opinion piece on Thursday (22 Feb 2024) arguing in favor of proxy voting in condo elections. I disagree with much of the discussion and the conclusion although I agree that proxies can be used as one means to meet quorum – this is important to avoid costly meeting cancellations, and in turn ensures the ability of the association to pass its important annual tax resolution. So, submitting a proxy “for quorum purposes only” is critical as a last resort - but *other proven, much more democratic ways of voting* (by in person, mail-in, or electronic ballots) *are readily available and also serve to meet quorum.*

No system is perfect, but I know firsthand that the present proxy setup can easily result in a revolving door to an entrenched Board autocracy, at the peril of owners' best interests. Because of the way the current proxy system works, the upcoming board election at my 550+ unit condo will effectively put the result in the hands of three proxy-holders, who are really only proxy *assignees* and not actually even required to vote as their assigners intend.

At issue is assignment of proxies: if used at all to help ensure quorum, more fair and democratic options such as directed proxies (where candidates are listed on the form) should be first choice, and Board proxies, if included for whatever reason, need to be the *-last-* choice (literally and figuratively), not the first listed (and thus effectively the default). Obviously, *direct voting* – in person, mail-in or electronic ballots, or by directed proxies – *is the best option.* Indeed, mail-in voting has been used successfully in Hawaii for the past two elections. Why not use it for condo associations?

HRS 514B-121(e) already allows AOOU Boards to approve electronic, machine or mail voting; HB2067 can level the playing field for all owners by making these options to vote available to all 514B associations.

BOTH SB 2404 & HB 2067 PROTECT OWNERS' RIGHTS.

22Feb2024

HB-2067-HD-1

Submitted on: 2/22/2024 10:38:00 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

This would make it even for more difficult for many associations to conduct the requisite business like the election of directors and the 'excess funds' rollover required by the IRS to exempt the funds from taxation. Even approving minutes!

HB-2067-HD-1

Submitted on: 2/22/2024 10:39:45 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kathy Kosec	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

1. 2067, HD1 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). If a statement of this nature must be added (even though it is not needed), it should be reworded to state that all standard proxy forms shall include a disclosure statement informing unit owners that elections may be conducted by electronic, machine, or mail voting subject to the provisions of 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, HD1 and urge the committee to defer it.

Respectfully submitted,

Kathy Kosec

HB-2067-HD-1

Submitted on: 2/22/2024 11:09:01 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Iris Iwami	Individual	Oppose	Written Testimony Only

Comments:

I oppose HB 2067. Owners should be allowed to have a choice on who their proxy is to be for Annual Association Meetings. I oppose removing those choices.

If an owner does not want to give their to the board of directors, they do not have to.

HB-2067-HD-1

Submitted on: 2/22/2024 11:35:31 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Stacy Tsui	Individual	Oppose	Written Testimony Only

Comments:

I oppose

HB-2067-HD-1

Submitted on: 2/22/2024 12:15:26 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shaunagh Haiola	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.
1. 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that

does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

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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, HD1 and urge the committee to defer it.

Respectfully submitted,

Shaunagh Haiola

HB-2067-HD-1

Submitted on: 2/22/2024 1:00:31 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gerald Rose	Individual	Oppose	Written Testimony Only

Comments:

The proposed changes would jeopardize the ability of many HOAs to gain quorum at Association Meetings. In addition if an owner trusts their Board of Directors, and believes they are working in the best interest of the HOA, that owner should be able to give their proxy to the Board. Particular in the light that proxies assigned to the Board as a whole must be voted on and approved by the entire Board present, which is the basis of all HOA business.

Thank you very much for your time.

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

H.B. 2067, HD1 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). If a statement of this nature must be added (even though it is not needed), it should be reworded to state that all standard proxy forms shall include a disclosure statement informing unit owners that elections may be conducted by electronic, machine, or mail voting subject to the provisions of 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, HD1 and urge the committee to defer it.

Respectfully,

Pamela J. Schell

HB-2067-HD-1

Submitted on: 2/22/2024 1:23:17 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

H.B. 2067, HD1 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). If a statement of this nature must be added (even though it is not needed), it should be reworded to state that all standard proxy forms shall include a disclosure statement informing unit owners that elections may be conducted by electronic, machine, or mail voting subject to the provisions of 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, HD1 and urge the committee to defer it.

Respectfully submitted,

Paul A. Ireland Koftinow

Testimony in Support of HB2067 HD1

Submitted for: Judiciary & Hawaiian Affairs Committee Hearing, scheduled for Friday, February 23, 2024 at 2:00 PM

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee,

My name is Gregory Misakian, and I currently serve as 2nd Vice President of the Kokua Council, Sub-District 2 Vice Chair of the Waikiki Neighborhood Board, and a Director on my condominium association's Board.

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-Moilili, 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.

And, if anyone tells you associations will not be able to attain a quorum, they forget to mention that there is a box on the proxy form, “for quorum purpose only.”

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).

An Ombudsman’s Office to address condominium association disputes and to enforce HRS 514B statutes is needed now, not in 2026 (when the LRB report would be issued) or beyond. The public and the Governor expected the Condominium Property Regime (CPR) Task Force would do something, and not just meet a few times, waste time, then quickly try to meet their required report deadline by throwing their responsibilities over the wall to another Government branch (with a financial cost yet to be determined).

What was Done

Act 189, signed into law by the Governor last year, gave hope that once and for all our legislators were taking notice. Sadly, the two Task Forces that were established were stacked with the worst possible Committee members, with the exception of one or two. It elicits that well-worn phrase, “are you kidding me.” And having the two Task Forces Chaired by attorneys who oppose better consumer protection measures and who regularly sue condominium owners, is not only unconscionable, it is outrageous.

Nominating and appointing those who openly and regularly “oppose” better condominium related consumer protection measures is a clear disregard for the public’s best interest. It is also an insult to the intelligence of the public as a whole (as if it won’t be noticed). Some may be fearful to speak out, since this seems to be the “island way,” but I am not. You simply need to read (and watch) the abundant opposition testimony from these Committee members (attorneys and DCCA staff) to see the “documented” evidence of their opposition. Some also openly show disdain for condominium owners in written statements and public comments that they make.

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.

What is also not needed is for the Legislature to continue to let certain people misinform openly, which I had to sit and watch today (2/22/24) as I participated in the Finance Committee hearing regarding HB1814 HD1, scheduled at 10:00 AM. The Committee chose to ask questions of Mr. Philip Nerney, who again provided “his” opinion and not facts, and “misinformed” the Committee numerous times. One glaring comment he made was that a Condominium Ombudsman would have the final say (i.e., there was no other judicial path in the courts to resolve an issue, if a party or both parties did not accept the Ombudsman’s Office findings). This is not only false, but Mr. Nerney has been informed of this numerous times, and on the record. Mr. Nerney also trivialized condominium owners’ concerns, what the issues really are, and used language that was disrespectful to condominium owners throughout Hawaii. In my opinion and the opinion of many others, he has no place on a Task Force meant to help condominium owners. Our legislators on Committees who are giving him the floor to spread more misinformation, are enabling this, and if not stopped are endorsing this. Some are also receiving campaign contributions from him, which is not only concerning, but I believe should be investigated based on what I am reporting.

Here is a snapshot of some campaign contributions:

Candidate	Contributor	Contributor					
Name	Type	Name	Date	Amount	Aggregate	Employer	Occupation
Kidani, Michelle	Individual	Nerney, Philip	12/22/2023	\$250.00	\$250.00		
McKelvey, Angus	Individual	Nerney, Philip	08/23/2023	\$250.00	\$250.00		Attorney
Keohokalole, Jarrett	Individual	Nerney, Philip	07/25/2023	\$250.00	\$250.00		
Bissen, Richard	Individual	Nerney, Philip	08/17/2022	\$750.00	\$1,000.00	Philip S. Nerney, LLLC	Attorney
Luke, Sylvia	Individual	Nerney, Philip	07/08/2022	\$2,000.00	\$4,000.00	Law Offices of Philip Nerney	Attorney
Bissen, Richard	Individual	Nerney, Philip	07/07/2022	\$250.00	\$250.00	Philip S. Nerney, LLLC	Attorney

Candidate	Contributor	Contributor					
Name	Type	Name	Date	Amount	Aggregate	Employer	Occupation
Takenouchi, Jenna	Individual	Nerney, Philip	06/03/2022	\$1,000.00	\$1,000.00	Law Offices of Philip S. Nerney LLC	Attorney
Luke, Sylvia	Individual	Nerney, Philip	12/08/2021	\$2,000.00	\$2,000.00	Law Offices of Philip Nerney	Attorney
Rhoads, Karl	Individual	Nerney, Philip	07/29/2021	\$1,000.00	\$1,000.00	Law Offices of Philip Nerney, LLC	Attorney
Takumi, Roy	Individual	Nerney, Philip	03/25/2020	\$150.00	\$650.00		
Cullen, Ty	Individual	NERNEY, PHILIP	11/05/2019	\$250.00	\$400.00		
Rhoads, Karl	Individual	Nerney, Philip	09/18/2019	\$2,000.00	\$2,350.00	Law Offices of Philip Nerney, LLC	Attorney
Luke, Sylvia	Individual	Nerney, Philip	05/07/2019	\$250.00	\$500.00	Law Offices of Philip Nerney	Attorney
Yamane, Ryan	Individual	Nerney, Philip	04/25/2019	\$150.00	\$150.00		
Cullen, Ty	Individual	NERNEY, PHILIP	04/24/2019	\$150.00	\$150.00		
Takumi, Roy	Individual	Nerney, Philip	04/16/2019	\$500.00	\$500.00		
Luke, Sylvia	Individual	Nerney, Philip	01/11/2019	\$250.00	\$250.00	Law Offices of Philip Nerney	Attorney
Rhoads, Karl	Individual	Nerney, Philip	01/11/2019	\$175.00	\$350.00	Law Offices of Philip Nerney, LLC	Attorney
Green, Josh	Individual	Nerney, Philip	07/12/2018	\$500.00	\$500.00		

Candidate	Contributor	Contributor					
Name	Type	Name	Date	Amount	Aggregate	Employer	Occupation
Fukunaga, Carol	Individual	Nerney, Philip	06/13/2018	\$500.00	\$700.00		
Yamane, Ryan	Individual	Nerney, Philip	04/27/2018	\$150.00	\$150.00		
Cullen, Ty	Individual	NERNEY, PHILIP	04/16/2018	\$150.00	\$150.00		
Luke, Sylvia	Individual	Nerney, Philip	04/12/2018	\$250.00	\$250.00	Law Offices of Philip Nerney	Attorney
Kidani, Michelle	Individual	Nerney, Philip	02/13/2018	\$150.00	\$450.00		
Rhoads, Karl	Individual	Nerney, Philip	11/08/2017	\$175.00	\$175.00	Law Offices of Philip Nerney, LLC	Attorney
Fukunaga, Carol	Individual	Nerney, Philip	09/15/2017	\$200.00	\$200.00		
Keith-Agaran, Gilbert	Individual	NERNEY, PHILIP	01/31/2017	\$250.00	\$250.00	LAW OFFICES OF PHILIP NERNEY	ATTORNEY
Rhoads, Karl	Individual	Nerney, Philip	09/26/2016	\$1,000.00	\$2,150.00	Law Offices of Philip Nerney, LLC	Attorney
Rhoads, Karl	Individual	Nerney, Philip	07/02/2016	\$1,000.00	\$1,150.00	Law Offices of Philip Nerney, LLC	Attorney
Yamane, Ryan	Individual	Nerney, Philip	04/04/2016	\$50.00	\$150.00		
Luke, Sylvia	Individual	Nerney, Philip	03/29/2016	\$250.00	\$500.00	Law Offices of Philip Nerney	Attorney
Kidani, Michelle	Individual	Nerney, Philip	02/24/2016	\$150.00	\$300.00		

Candidate	Contributor	Contributor					
Name	Type	Name	Date	Amount	Aggregate	Employer	Occupation
Rhoads, Karl	Individual	Nerney, Philip	01/20/2016	\$150.00	\$150.00	Law Offices of Philip Nerney, LLC	Attorney
Keith-Agaran, Gilbert	Individual	NERNEY, PHILIP	01/15/2016	\$150.00	\$300.00	LAW OFFICES OF PHILIP NERNEY	ATTORNEY
Luke, Sylvia	Individual	Nerney, Philip	11/03/2015	\$100.00	\$250.00	Law Offices of Philip Nerney	Attorney
Luke, Sylvia	Individual	Nerney, Philip	03/20/2015	\$150.00	\$150.00	Law Offices of Philip Nerney	Attorney
Kidani, Michelle	Individual	Nerney, Philip	02/20/2015	\$150.00	\$150.00		
Keith-Agaran, Gilbert	Individual	NERNEY, PHILIP	01/08/2015	\$150.00	\$150.00	LAW OFFICES OF PHILIP NERNEY	ATTORNEY
Luke, Sylvia	Individual	Nerney, Philip	06/20/2014	\$150.00	\$200.00	Law Offices of Philip Nerney	Attorney
Rhoads, Karl	Other Entity	Law Offices of Philip S Nerney LLLC	05/05/2014	\$150.00	\$150.00		
Kidani, Michelle	Individual	Nerney, Philip	12/18/2013	\$500.00	\$650.00		
Kidani, Michelle	Individual	Nerney, Philip	03/12/2013	\$50.00	\$150.00		
Kidani, Michelle	Individual	Nerney, Philip	08/22/2012	\$25.00	\$225.00		
Abercrombie, Neil	Other Entity	Law Offices of	06/26/2012	\$300.00	\$300.00		

Candidate Name	Contributor Type	Contributor Name	Date	Amount	Aggregate	Employer	Occupation
		Philip S Nerney LLLC					
Kidani, Michelle	Individual	Nerney, Philip	03/01/2012	\$100.00	\$200.00		
Abercrombie, Neil	Individual	Nerney, Philip	08/29/2011	\$300.00	\$300.00		
Pacarro, Franklin Jr.	Individual	Nerney, Philip	03/26/2010	\$250.00	\$250.00		
Luke, Sylvia	Individual	Nerney, Philip	04/17/2009	\$250.00	\$250.00	Law Offices of Philip Nerney	Attorney
Luke, Sylvia	Individual	Nerney, Philip	04/18/2008	\$100.00	\$200.00	Law Offices of Philip Nerney	Attorney

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 Gregorys ... 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-HD-1

Submitted on: 2/22/2024 1:49:28 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

H.B. 2067, HD1 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). If a statement of this nature must be added (even though it is not needed), it should be reworded to state that all standard proxy forms shall include a disclosure statement informing unit owners that elections may be conducted by electronic, machine, or mail voting subject to the provisions of 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, HD1 and urge the committee to defer it.

I further request that you stop putting through legislation that clearly is only knee jerk reaction to a very small minority of your constituents that did not get their way for something that happened in their community. The individual communities governing documents and the statutes already provide remedies for most situations. When you react to those who clearly do not know how to live in a community association, you will ruin the system for those who can.

Respectfully submitted,

Laurie Sokach AMS, PCAM

Community Portfolio Manager

HB-2067-HD-1

Submitted on: 2/22/2024 5:10:22 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Natalie Graham-Wood	Individual	Oppose	Written Testimony Only

Comments:

I do NOT support HB2067. Condo owners should continue to have the right to assign their proxies to their board. I live in Mililani, Oahu.

HB-2067-HD-1

Submitted on: 2/22/2024 5:26:26 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Elaine Panlilio	Individual	Oppose	Written Testimony Only

Comments:

I respectfully oppose HB2067.

Unit owners who have voted for their board members and who trust their board to make competent and fair decisions should be given the choice to give their proxy to the board. If they do not believe that their board is competent and fair, they will still have the option to not give their proxy to the board.

By allowing the unit owners to give their proxy to the board, this avoids the concentration of too much power in one individual.

Thank you for the opportunity to testify.

Elaine Panlilio

HB-2067-HD-1

Submitted on: 2/22/2024 9:12:21 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Marcia Kimura	Individual	Support	Written Testimony Only

Comments:

This is in support of HB2067.

The current arrangement allowing sitting boards or individual board members prolonged, unwanted service can only be perpetuated by what can accurately be termed "rigged elections." Contrary to mistaken beliefs, the measure does not remove the option to indicate "quorum only," just the opportunity to steal or manipulate votes in favor of current directors.

HB-2067-HD-1

Submitted on: 2/23/2024 9:42:37 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

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

Comments:

With the proliferation of condominiums in the last few years has come a geometric incidence of abuse by condo Boards of Directors. A review of recent CIVIL BEAT articles documents these facts.

Power to condo unit owners needs to be increased and power to condo Boards of Directors needs to be decreased. Otherwise get prepared for an even bigger surge in lawsuits.

Mike Trombetta

Dowsett Point

JHA testimony

From: Pamela Briece <pamelabriecemms@gmail.com>
Sent: Thursday, February 22, 2024 9:25 AM
To: JHA testimony
Subject: Opposition to H. B. 2067, HD1

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Dear Representative Tarnas, Chair, Representative Takayama, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2067, HD1 for the following reasons:

I am the President of Makaha Surfside in Waianae. We are a 454 unit condominium complex. Unfortunately 80-85% of owners either are investors off island or snowbirds. If this bill passes we will never reach quorum again. Getting 50% +1 for quorum to hold our annual meeting now is a daunting task but this bill would end our ability to hold our meetings because we would never be able to reach quorum. Please keep this in mind when casting your vote. Your bill would have the disastrous effect of not only taking away the rights of owners to vote but stick us with the same board forever.

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 the directors who comprise the board. 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.

Since 1984, the law has allowed owners to give their proxies to the board as an entity and since 1989, the law has allowed owners to give their proxies to the board members individually, with each director receiving an equal percentage. It is through this mechanism that owners are able to ensure that their vote is cast by the members of the board, the very people they trust. The Legislature should not adopt a bill that seeks to prevent owners from giving proxies to the board as a whole or to the directors present at a meeting simply because a minority group of owners have an expressed concerns about their own boards.

Most associations rely upon proxies given to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, to achieve a quorum which is required to conduct business. If owners are given a proxy form that does not give them the option of checking a

box giving their proxies to the board as a whole or to the directors present at the meeting, with the vote to be shared with each director receiving an equal percentage, they might not return a proxy at all. This is because their trust is in the board and the directors who comprise the board, and not in a single individual.

This bill has the potential of making it more difficult for associations to achieve a quorum. Without a quorum, no business may be conducted, including the election of directors and the adoption of a standard resolution on assessments. The failure to adopt a resolution on assessments may lead to associations being required to pay taxes on excess income at the end of the year that could have been avoided.

H.B. 2067, HD1 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). If a statement of this nature must be added (even though it is not needed), it should be reworded to state that all standard proxy forms shall include a disclosure statement informing unit owners that elections may be conducted by electronic, machine, or mail voting subject to the provisions of 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, HD1 and urge the committee to defer it.

Respectfully submitted,

Pam

Pamela E. Briece
President
Makaha Surfside
Board of Directors
503-307-9280