

SB-2404-SD-1

Submitted on: 3/8/2024 6:34:27 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Brandon Madix	Palehua Townhouse Association	Support	Written Testimony Only

Comments:

Our association supports SB2404. Please pass this bill,

Mike Golojuch, President

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

March 9, 2024

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

Re: **SB 2404 SD1 OPPOSE**

Dear Chair Nakashima, Vice Chair Sayama and Committee Members:

SB 2404 SD1 should be deferred. It is premised upon the errant view that condominium owners lack the capacity to discern and vote their self-interest.

Moving SB 2404 SD1 forward would mean that the Committee regards an entire class of real property owners as being hapless victims. On what basis?

There is nothing new about complaints concerning proxies. There have always been stories about some owner with a lot of proxies not being elected.

Current proxy law¹ enables every owner to put their qualifications forward to other owners. If an owner prefers to express confidence in, and support for, incumbent fiduciaries, that is a voluntary choice, made on the basis of adequate information. The Committee should respect the opportunity for an owner to make that choice.

¹ (i) With respect to the use of association funds to distribute proxies:

(1) Any board that intends to use association funds to distribute proxies, including the standard proxy form referred to in subsection (e), shall first post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days before its distribution of proxies. If the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:

(A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or

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

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

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

Chair Mark M. Nakashima
Vice Chair Jackson D. Sayama
March 9, 2024
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The Committee may wish to take note of the Final Report to the Legislature, Recodification of Chapter 514A:

[https://cca.hawaii.gov/reb/condo_ed/condo_recod/condo_worki
ngrecod/recod_final/](https://cca.hawaii.gov/reb/condo_ed/condo_recod/condo_worki
ngrecod/recod_final/)

The Real Estate Commission's Comment on what became HRS §514B-123 took the board majority and board equal boxes for granted.

The issue of concern was including a box *for quorum only*:

3. The statutory requirement for a "for quorum purposes only" box on the standard proxy form authorized by the association (HRS §514A-83.2(a)(3)(A)), which tends to encourage the submission of "for quorum purposes only" proxies, has been deleted. Such proxies often result in "opening meeting doors" but not allowing any business to be done. Associations suffer almost pointless additional mailing and meeting expenses because of this. Contrary to the assertion of some stakeholders, "for quorum purposes only" proxies are not neutral. They count as "no" votes for any business at the association's meeting, making it much more difficult for any business to be done since all "for quorum purposes only" proxies are counted against any proposal (including elections) actually voted on by the association. It should be noted that unit owners will still be able to execute a proxy stating that their proxy can only be used for quorum purposes; it just won't be a statutorily required box on the standard proxy form authorized by the association.

A quorum only box was included in Act 164 (2004), but the Commission's concern was directed at the *salient* issue.

If it is nonetheless assumed that adult owners of expensive real property are somehow effectively preyed upon by unscrupulous boards, then that would pertain to board members' performance of their fiduciary duty.

Just last year, the legislature created a Condominium Property Regime Task Force (Act 189 (2023)), which is expressly charged to:

(1) Examine and evaluate issues regarding condominium property regimes governed by chapter 514B, Hawaii Revised Statutes, and conduct an assessment of the alternative dispute resolution systems that have been established by the legislature;

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(2) Investigate whether additional duties and fiduciary responsibilities should be placed on members of the boards of directors of condominium property regimes; and

(3) Develop any legislation necessary to effectuate the purposes of this subsection.

The Task Force provided a unanimous interim report to the legislature calling for a study by the Legislative Reference Bureau. HB 1814 HD1 and SB 2726 SD2 reflect the proposed implementation of that recommendation.

The Task Force recognized the need for objective data, to enable sound policy recommendations.

HB 1814 HD1 and SB 2726 SD2 are, therefore, the appropriate vehicles for attending to the apparent concern animating SB 2404 SD1. The Committee should allow the Task Force to perform its duty.

CAI Legislative Action Committee, by

Philip Nerney

Its Chair

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

I OPPOSE S.B. 2404, SD1 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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. This has been the preferred choice of many condominium owners for 40 years. Without good cause or justification, this bill will eliminate the requirement that proxies contain a box allowing owners to give their proxies to the board as a whole.

The proponents of eliminating the “board as a whole box” on proxies have argued that the box gives too much power to condominium boards. However, they completely ignore and disregard the fact that owners who check the box do so because they trust their boards and want their boards to have the power to cast their vote. Owners are free to check any of the boxes on the proxy. The “board as a whole box” is merely one of several options. The Legislature should not interfere with the right of owners to give their proxies to whom they please simply because a small group of owners are unhappy with their boards.

Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the

proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

If this bill is adopted, many owners who would otherwise give their proxies to their boards may decide not to return a proxy when they don't see the "board as a whole" box because they don't trust anyone else enough to name them as their proxy. If this happens, associations will have a difficult time achieving a quorum because proxies given to the board as a whole generally make up a significant part of the quorum. While the proponents may argue that owners are still free to give their proxies to the directors present at the meeting with the vote to be shared with each director receiving an equal percentage, this disregards the fact that directors individually may vote differently from the board as a whole and owners may not be willing to choose that option.

While proponents of this bill may try to downplay the argument about the lack of a quorum by arguing that people who don't know to whom to give their proxies can simply check the quorum only box, this position ignores the fact that quorum only proxies cannot be voted on issues that arise at a meeting or for the election of directors. A large number of "quorum only" proxies will make it difficult to achieve the requisite percentage vote on a number of issues that could arise at an association meeting including, in many instances, the adoption of a standard annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

It is simply unreasonable to make it more difficult for associations to conduct business because a minority group of owners are unhappy with their boards when the fact is that a great number of condominium owners are happy with their boards as evidenced each year by the fact that they give their proxies to the board.

Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Reyna Murakami

AOUO President, Mariner's Village 1

AOUO President, Waialae Place

AOUO Vice President, The Continental Apartments

SB-2404-SD-1

Submitted on: 3/10/2024 10:41:45 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

I OPPOSE S.B. 2404, SD1 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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. This has been the preferred choice of many condominium owners for 40 years. Without good cause or justification, this bill will eliminate the requirement that proxies contain a box allowing owners to give their proxies to the board as a whole.

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Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-

printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

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Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Mark McKellar

SB-2404-SD-1

Submitted on: 3/10/2024 12:08:33 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

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

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

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

SB-2404-SD-1

Submitted on: 3/10/2024 10:13:07 PM

Testimony for CPC on 3/12/2024 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. 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.

At its meeting on February 7, 2022, the Association of Apartment Owners of Honolulu Tower Board of Directors voted to oppose SB2852, the precursor to 2024’s SB2404. Among objections was the removal of two options given to owners to give their proxies to the board as a whole or board equal.

At its February 6, 2023 meeting the Board again reiterated its opposition to the removal of two options given to owners to give their proxies to the board as a whole or board equal.

These options have existed since the 1980s. Those who want it removed will say the owners can select for quorum only. Quorum only creates unintended consequences.

At the board’s March 4, 2024 meeting concern was raised that too many “quorum only” will prevent us from taking needed action, including the adoption of the annual resolution on assessments which is needed to avoid paying taxes on excess income at the end of the year. The association does not need more expenses or lack of income. We are already faced with major increases in require insurance premiums, supply chain issues, etc.

Our annual meeting is later this week. By the time we received notice of this hearing it was too late to get updated numbers of quorum only, board equal, and board as a whole and submit the testimony on time.

It is estimated that 45% of our owners are absentee owners. They do not live on site. Some live elsewhere in the state, others on the mainland or in international locations. Many of the absentee owners do not participate in the annual meetings. Quorum is obtained from those who live onsite. 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. Last year we had 44%.

The Board urges you to defer this bill.

Idor Harris
Resident Manager



**Hawaii
Legislative
Council
Members**

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

Tuesday, March 12, 2024
2:00 PM, Room 329

RE: **SB2404 SD1** Limit Proxy Form - **OPPOSE with Amendments**

Dear Chair Nakashima, Vice Chair Sayama & Committee Members,

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

This is **why we support the ORIGINAL SB2404, which prohibits the use of proxies in condominium association voting**, requires associations to allow members to vote by mail and attend and cast votes in association meetings through internet, teleconference, or other electronic transmission technology and requires associations to mail out paper ballots before any annual or other periodic election of board members; and we now oppose the amendments offered in SD1.

We urge this committee to revert back to the original SB2404, because proxy voting unfairly benefits the incumbent directors seeking reelection to the association board and the contracted community management company.

Management companies have the personal phone numbers, email addresses, and mailing addresses for every condo owner; they are in a position to use their unique access to each condo owner to collect proxy votes to support a particular board member – perhaps a member who has committed to renew the management contract or overlook lapses in the quality of service provided by the management company.

The SD1 you are considering, would allow the management company to write in their choice of proxy recipient and mail this bias form to all the owners whereby continue to control the condo board.

In order to reduce conflicts of interests, abuses of power, and distortions of democracy, we urge this committee to pass out SB2404 in its original form and prohibit the use of proxy voting. For many individual owners, their condo may be their most valuable asset. They must be able to protect their home through direct voting, whether that be via on line, in person or written voting.

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

SB-2404-SD-1

Submitted on: 3/11/2024 12:25:06 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

We join with Anne Anderson, Esq. and numerous other subject matter experts in opposing this bill.

Further, in this election year, we believe that homeowners and their meetings will be damaged by this loss of choice with respect to the proxy form. Finally, there will most probably be conflicting opinions whether this bill denies owners the choice to select Board Majority or continues to permit it in a non-mandatory environment.

LATE

SB-2404-SD-1

Submitted on: 3/11/2024 2:22:40 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

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Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-

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While proponents of this bill may try to downplay the argument about the lack of a quorum by arguing that people who don’t know to whom to give their proxies can simply check the quorum only box, this position ignores the fact that quorum only proxies cannot be voted on issues that arise at a meeting or for the election of directors. A large number of “quorum only” proxies will make it difficult to achieve the requisite percentage vote on a number of issues that could arise at an association meeting including, in many instances, the adoption of a standard annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

It is simply unreasonable to make it more difficult for associations to conduct business because a minority group of owners are unhappy with their boards when the fact is that a great number of condominium owners are happy with their boards as evidenced each year by the fact that they give their proxies to the board.

Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Mahalo for your time,

Rachel Glanstein

LATE

SB-2404-SD-1

Submitted on: 3/11/2024 2:40:00 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Philip Mulno	Pulelehua AOA	Oppose	Written Testimony Only

Comments:

I oppose this bill as written. A lot of AOA's have difficulty getting in person quorums and without this option the AOA's will have their hands tied and nothing will be able to be done.

LATE

SB-2404-SD-1

Submitted on: 3/11/2024 2:54:55 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Allene Ishikawa	Pulelehua AOA	Oppose	Written Testimony Only

Comments:

I am opposing this bill because without this option, we would never have a quorum to conduct our concerns for our building.

SB-2404-SD-1

Submitted on: 3/9/2024 7:26:16 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

Support. I am a condominium homeowner and appreciate that the legislature has found a compromise to allow proxies, and at the same time, minimize the use of those proxies by the Board of Directors as a whole potentially using those proxies to re-elect themselves. It's a step in the right direction that empowers the voice of homeowners.

SB-2404-SD-1

Submitted on: 3/9/2024 7:54:07 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

I support the **elimination** of (C) Proxy to the whole Board. The Amended Bill shows that it is to be deleted. However the description shows that it is **not** to be deleted.

Therefore I support the deletion of Proxy to the Whole Board but do not support the Bill if the description intends that option to remain on the Condo proxy voting paperwork.

SB-2404-SD-1

Submitted on: 3/9/2024 10:35:17 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

I support this measure.

**House of Representatives
The Thirty-Second Legislature
Committee on Consumer Protection and Commerce
Tuesday, March 12, 2024
2:00 p.m.**

To: Representative Mark M. Nakashima, Chair
Re: SB 2404 SD 1, Relating to Condominiums

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

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

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

Mahalo for the opportunity to testify in **support of SB 2404 SD 1**, however **I prefer the more consumer protective measure, HB 2067 HD 2** that recently crossed from the House to the Senate.

Every year, condominium associations are required to hold their annual meetings and elections about which the Hawaii State Department of Commerce and Consumer Affairs (DCCA) wrote in its brochure, *Owners' Rights and Responsibilities*,¹

“owners' most important role is electing directors.”

While some owners attend their annual association meetings and vote in person, many use proxy forms that assign another to vote in their stead, creating the misleading impression that these owners' decisions are represented because the standard proxy forms provided by property management companies that facilitate most association elections pursuant to HRS514B-123 are *general* proxies that allow the proxy holder to vote however the holder wants, and are not *directed* proxies that instruct the proxy holder how to vote.

Experience has shown that these proxies can be assigned even further, by the proxy holder to another designee, without the knowledge of the owner, creating an even greater distance between the owner of the vote and the one who casts that owner's vote.

Despite this knowledge, property management companies and association attorneys testify that

¹Real 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...

the use of proxies offers owners “free choice,” revealing their preference for disengaged and absent owners as this detachment makes management and counsel’s relationships with directors less scrutable.

But **states with larger numbers of condominium units or homeowners’ associations**, like Florida (over 1.5 million *condominium* units²),³ Illinois (over 1 million *condominium* units⁴),⁵ and Arizona (2.2 million residents live in homeowners associations⁶ which comprise nearly 1/3 of their housing stock⁷)⁸ **prohibit the use of proxy voting because of the potential for election fraud, and mandate ballot voting for the election of directors.**

(Please see pages 6 and 7 for screenshot excerpts from those states’ statutes regarding condominiums.)

Indeed, owners’ scrutiny of our associations’ election records revealed “irregular” electoral processes that occurred primarily at the election facilitator’s level, usually the property management company as they oversee most association elections despite their pecuniary interest in the election results. Whether intentional, caused by human error, or due to sheer coincidence, nearly every “irregularity” in every step of the election process was revealed to favor re-electing incumbent directors.

Some of these observed “irregularities” were:

- Proxies that were altered with an additional selection (an additional “x”) that diminished those proxies to only contributing towards the quorum, thus disenfranchising those owners of their opportunity to have their proxy-assignees vote in their stead.
- Voiding valid proxies and accepting invalid proxies as valid for use. Both actions may be discounted as human error but were noticeably tilted towards board incumbents.
- Misplacing certain proxies and/or ballots which mishandling favored incumbents.
- The omission of valid proxies from the final tabulation so that fulfilling the quorum would appear to have failed, causing the annual election to be deferred to a later date and allowing incumbent boards to continue their associations’ business until the next election.

²<https://www.caionline.org/Advocacy/Priorities/condolegislation/Documents/Building%20Data%20and%20Statistics/Florida%20condominium%20Data%20revised.pdf>

³http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0723/Sections/0723.078.html

⁴ <https://www.caionline.org/search/pages/results.aspx?k=illinois>

⁵ <https://www.chicagotribune.com/2011/03/14/associations-proxy-voting-system-violates-state-law/>

⁶ <https://www.axela-tech.com/blog/local/arizona-hoa-collections/#:~:text=Welcome%20to%20Arizona,of%20common%20interest%20reality%20associations.>

⁷ <https://phoenixagentmagazine.com/2023/04/21/nearly-one-third-of-arizona-homes-are-part-of-an-hoa-among-the-highest-percentages-in-the-nation/>

⁸<https://www.azleg.gov/ars/33/01812.htm>

(For a third-party perspective of an association’s election, please see page 5, a copy of a message from Terrence Revere, Esq., to House Speaker Scott Saiki regarding an association’s election.)

Additionally, although legally prohibited from soliciting proxies for their use as assignees but whose livelihood depends on election results, associations’ management was witnessed to sidestep the law by directing owners to select proxy options that were favorable to incumbents.

Some of these owners reported that they felt pressured to accede to these “recommendations” for fear of mistreatment or of losing services to which they are properly entitled.

The “board as whole” proxy option serves to confer greater voting power to the board’s majority, 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.

Once elected, directors have tremendous latitude and power to operate the business of the association, having the authority to enter contracts, spend association funds, adopt and enforce rules, and discipline owners and residents. And decisions that are statutorily designated for the association’s determination can be misappropriated using proxies that inflate the dominance of the board. **The legal and financial implications of these elections have formidable consequences; thus, everything hinges on the integrity of the electoral process.**

Proponents of the continued use of proxies insist that proxies are needed to offset the apathy of owners, but, year after year, the re-election of incumbent directors, regardless of sizeable dissent from owners, convince owners that these incumbents are entrenched and inexorable, which inevitably generates greater owner-apathy because their votes appear to have little consequence.

In 2020, Hawaii’s Office of Elections reported that the mail-in ballot response was a record-breaking 95.11% of overall voter turnout.⁹ In 2022, Hawaii’s Office of Elections reported that the mail-in ballot turnout was a record-breaking 96.02% of overall voter turnout.¹⁰

A similar direct-voting-by-ballot method, in person or by mail (i.e., absentee ballot), with an auditable document trail, would benefit, engage, and empower more condominium homeowners than the current condominium association electoral process, 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.

Further, the facilitation of association elections by biased parties with interests in the outcome should be discouraged, and replaced by the use of neutral professional third parties to oversee the electoral process to assure owners of the integrity of the election and that the results are

⁹<https://files.hawaii.gov/elections/files/results/2020/general/histatewide.pdf>

¹⁰<https://elections.hawaii.gov/wp-content/results/histatewide.pdf>

honest.

For one-third of Hawaii's residents, their residential community associations are significant, so the truly representative character of these associations should be a principal policy goal of all legislators.

Legislators who encourage condominiums and HOA housing development to alleviate Hawaii's housing shortage and the high cost of housing should recognize that current association election laws nurture owner disenfranchisement and detachment, and enable fraud.

Legislators should end these improper processes by eliminating voting-by-proxy, enabling mail-in ballots, and making association election rules enforceable.

"Elections play a vital role in a free and fair society and are a cornerstone of America democracy. We recognize the fundamental link between the trust in election infrastructure and the confidence the American public places in basic democratic function."¹¹

Mahalo for the opportunity to testify in support of SB 2404 SD 1. To reiterate, I prefer the language in HB 2067 HD 2.

¹¹<https://www.dhs.gov/topics/election-security>

ADDENDA

Please note that emphases highlighted in green in this copy of an emailed message are mine:

Terry revere <terry@revereandassociates.com>
 To: repsaiki@capitol.hawaii.gov
 Cc: Lila Mower <lila.mower@gmail.com>

Thu, Mar 4, 2021 at 7:00 AM

House Bill 221

Dear Scott,

I learned of House Bill 221. It and much more are needed to fix the very flawed voting system which absurdly advantages incumbents and allows Boards to run wild. And obviously these problems should be resolved way before 2050 as is currently set forth in the bill.

A case in point is happening in real time at a large condominium, The Peninsula in Hawaii Kai. The Board is losing the proxy war. In desperation, the Board and an AOA employee blatantly violated HRS 514B-123 by soliciting for proxies at the last minute.

When called out on it, the Board, its lawyer and management acknowledged that there may have been a violation of the statute.

This is where things went from bad to worse.

Instead of taking actual corrective action, like resigning or not voting proxies they received after the illegal solicitation, the Board decided to postpone the election from March to May.

This has two absurd and devastating effects:

1. It allows the Board more time to politic in their favor.
2. It has the more devastating effect of invalidating ALL proxies, including those of their opponents who must now begin the proxy gathering process anew. This is because proxies are only good for the meeting they are called for.

This is akin to team losing a football game 27-3 with two minutes to go, then cheating, then announcing that since the other side objected to it cheating, it was now going to put on its referee hat and start the game over with the score 0-0. So the guilty are rewarded and the innocent owners who played by the rules punished.

I am not, as Dave Berry says, making this up. If you would like to see the illegal solicitation letter and my back and forth emails with the AOA lawyer helping to engineer these Banana Republic election postponement and "do over" shenanigans, please let me know.

Another huge problem that may have lead to the above is that many AOA documents allow Board secretaries to learn of the proxy counts before anyone else. You can imagine the enormous advantage incumbents can get by learning ahead of time how the voting is going.

The problem is nothing stops management companies from keeping those who they perceive as their clients (the ruling factions on boards) happy by telling Board secretaries how the vote is going. And nothing prevents the secretaries from using this information to strategize with their political allies. This can lead to absurdities like what is happening at The Peninsula now, where they are using simply postponing the election and cancelling the proxies like tin pot dictators.

This obviously leads to voter disenfranchisement, voters being turned off and litigation.

Please feel free to forward this information on to whoever would have an interest at the Legislature.

Mahalo,

Terry

From Florida's statutes (website URL is visible):

leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/07...

of selection and removal, and compensation, if any, of officers and board members. Unless otherwise provided in the bylaws, the board of directors shall be composed of five members. The board of directors shall elect a president, secretary, and treasurer who shall perform the duties of those offices customarily performed by officers of corporations, and these officers shall serve without compensation and at the pleasure of the board of directors. The board of directors may elect and designate other officers and grant them those duties it deems appropriate.

(b) *Quorum; voting requirements; proxies.*—

1. Unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum. Decisions shall be made by a majority of members represented at a meeting at which a quorum is present.
- 2.a. A member may not vote by general proxy but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and any other matters for which this chapter requires or permits a vote of members. A proxy, limited or general, may not be used in the election of board members in general elections or elections to fill vacancies caused by recall, resignation, or otherwise. Board members must be elected by written ballot or by voting in person. If a mobile home or subdivision lot is owned jointly, the owners of the mobile home or subdivision lot must be counted as one for the purpose of determining the number of votes required for a majority. Only one vote per mobile home or subdivision lot shall be counted. Any number greater than 50 percent of the total number of votes constitutes a majority. Notwithstanding this section, members may vote in person at member meetings or by secret ballot, including absentee ballots, as defined by the division.

From Arizona's statutes (website URL is visible):

← → ↻ azleg.gov/ars/33/01812.htm ☆ 📄 📄 📄 ⋮

33-1812. [Proxies; absentee ballots; definition](#)

A. Notwithstanding any provision in the community documents, after termination of the period of declarant control, votes allocated to a unit may not be cast pursuant to a proxy. The association shall provide for votes to be cast in person and by absentee ballot and, in addition, the association may provide for voting by some other form of delivery, including the use of e-mail and fax delivery. Notwithstanding section 10-3708 or the provisions of the community documents, any action taken at an annual, regular or special meeting of the members shall comply with all of the following if absentee ballots or ballots provided by some other form of delivery are used:

1. The ballot shall set forth each proposed action.
2. The ballot shall provide an opportunity to vote for or against each proposed action.
3. The ballot is valid for only one specified election or meeting of the members and expires automatically after the completion of the election or meeting.
4. The ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the unvoted ballot to the member.
5. The ballot does not authorize another person to cast votes on behalf of the member.
6. The completed ballot shall contain the name, address and signature of the person voting, except that if the community documents permit secret ballots, only the envelope shall contain the name, address and signature of the voter.
7. Ballots, envelopes and related materials, including sign-in sheets if used, shall be retained in electronic or paper format and made available for member inspection for at least one year after completion of the election.

B. Votes cast by absentee ballot or other form of delivery, including the use of e-mail and fax delivery, are valid for the purpose of establishing a quorum.

C. Notwithstanding subsection A of this section, an association for a timeshare plan as defined in section 32-2197 may permit votes by a proxy that is duly executed by a unit owner.

D. For the purposes of this section, "period of declarant control" means the time during which the declarant or persons designated by the declarant may elect or appoint the members of the board of directors pursuant to the community documents or by virtue of superior voting power.

From Illinois' statutes (website URL is visible):

ilga.gov/legislation/ilcs/ilcs5.asp?ActID=3273&ChapterID=62

association or its designated agent by mail or other means of delivery specified in the declaration or bylaws; or

(4) by any electronic or acceptable technological means.

Votes cast under any paragraph of this subsection (h-5) are valid for the purpose of establishing a quorum.

(i) The association may, upon adoption of the appropriate rules by the board, conduct elections by electronic or acceptable technological means. Members may not vote by proxy in board elections. Instructions regarding the use of electronic means or acceptable technological means for voting shall be distributed to all members not less than 10 and not more than 30 days before the election meeting. The instruction notice must include the names of all candidates who have given the board or its authorized agent timely written notice of their candidacy and must give the person voting through electronic or acceptable technological means the opportunity to cast votes for candidates whose names do not appear on the ballot. The board rules shall provide and the instructions provided to the member shall state that a member who submits a vote using electronic or acceptable technological means may request and cast a ballot in person at the election meeting, and thereby void any vote previously submitted by that member.

SB-2404-SD-1

Submitted on: 3/9/2024 11:37:12 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

I strongly oppose this bill as it eliminates a choice for Owners. We should be able to choose to give our proxy vote to the Board as a whole if we want to do so. Many condominium owners live elsewhere and rely on their Association Boards, with which they have good working relationships, to properly manage Association finances and facilities, and are confident in their decisions. Eliminating this proxy option takes away our ability to choose the Board as a whole. We may not want to choose any one person to vote on our behalf, but to trust the elected Board to vote in the interests of all.

This Bill is grounded in the false assumption that Association Boards are bad or dysfunctional or untrustworthy. Really? That's a sad precedent and should not be used to form laws. Please do not create rules based on the exception, rather than the majority of Boards who are honest and functional. I urdge you to vote no on SB2404.

Mahalo.

Dale Arthur Head
1637 Ala Mahina Place Honolulu, HI 96819
sunnymakaha@yahoo.com **Saturday 9 March 2024**

**Aloha CPC Chair Mark M. Nakashim, Vice Chair Jackson D. Sayama,
and esteemed members**

Regarding SB2404SD1: Yes, I SUPPORT passage of this Bill even though it is identical to five years old **HB347**, which had cleared both this and the Judiciary committees. After 'crossing over' to the Senate it was promptly killed. The reason was quite simple, **M\$O\$N\$E\$Y**. My testimony on HB347 is unchanged as this is the same Bill.. Problem with HOA (Home Owners Association) proxies is that certain companies freely and wrongfully funnel them to their preferred candidates for election to a Board of Directors so that the Board is just what the Managing Agent wants. This is **corruption**, in my opinion. And, more, it is a **'racket'** as the state has been made aware of this matter in past years and done nothing about it. How sweet it is for those that profit from this. **Proxies are a 'gift that keeps on giving'.**

Here was my testimony for HB347 of 2019, which now resubmitted for SB2404SD1
HB-347

Submitted on: **1/31/2019 7:19:14 AM**
Testimony for CPC on 2/5/2019 2:00:00 PM
Submitted By Organization Testifier
Position
Present at
Hearing
Dale Individual Support: Yes

Comments:

I requested this bill be introduced and support its passage. For the past several years now in my condo association we have had 'sham' elections enabled to occur by the curious category for owners to assign their Proxy to Board as a 'whole', or, to be divided equally between its members. It amounts to an 'incumbent preservation act', in this manner.

Each year, the private property management company, Hawaiian Properties LLC, performs the role of 'running' our election for Board of Directors at an annual meeting. Their designated manager does not advise attendees 'how many proxies' have been assigned to either category. After people are handed a ballot to check off which candidate they are voting for, routinely, a Board of Directors President calls for a 'sidebar' meeting of Board members. There he or she makes a Motion to award 'All proxies assigned to the Board to....' (usually their closed friends and allies on the Board). Under this circumstance, the persons who would have been 'voted off' by owners become the top holder of Proxies and however many votes each one is worth. For 2018 we had six candidates for four positions. Under 'cumulative voting', each

Proxy was then worth four votes. Although property manager declined to reveal how many such Proxies were assigned in the two designated categories for the Board (per the state required Proxy format), this later was ascertained only after making three separate trips to Hawaiian Properties (by myself). [This took a total of 3 trips to get 5 hours in their office. Time on the road to accomplish this was 8 hours. So, it took me 13 hours to get information which could / should have been provided at our annual meeting.]

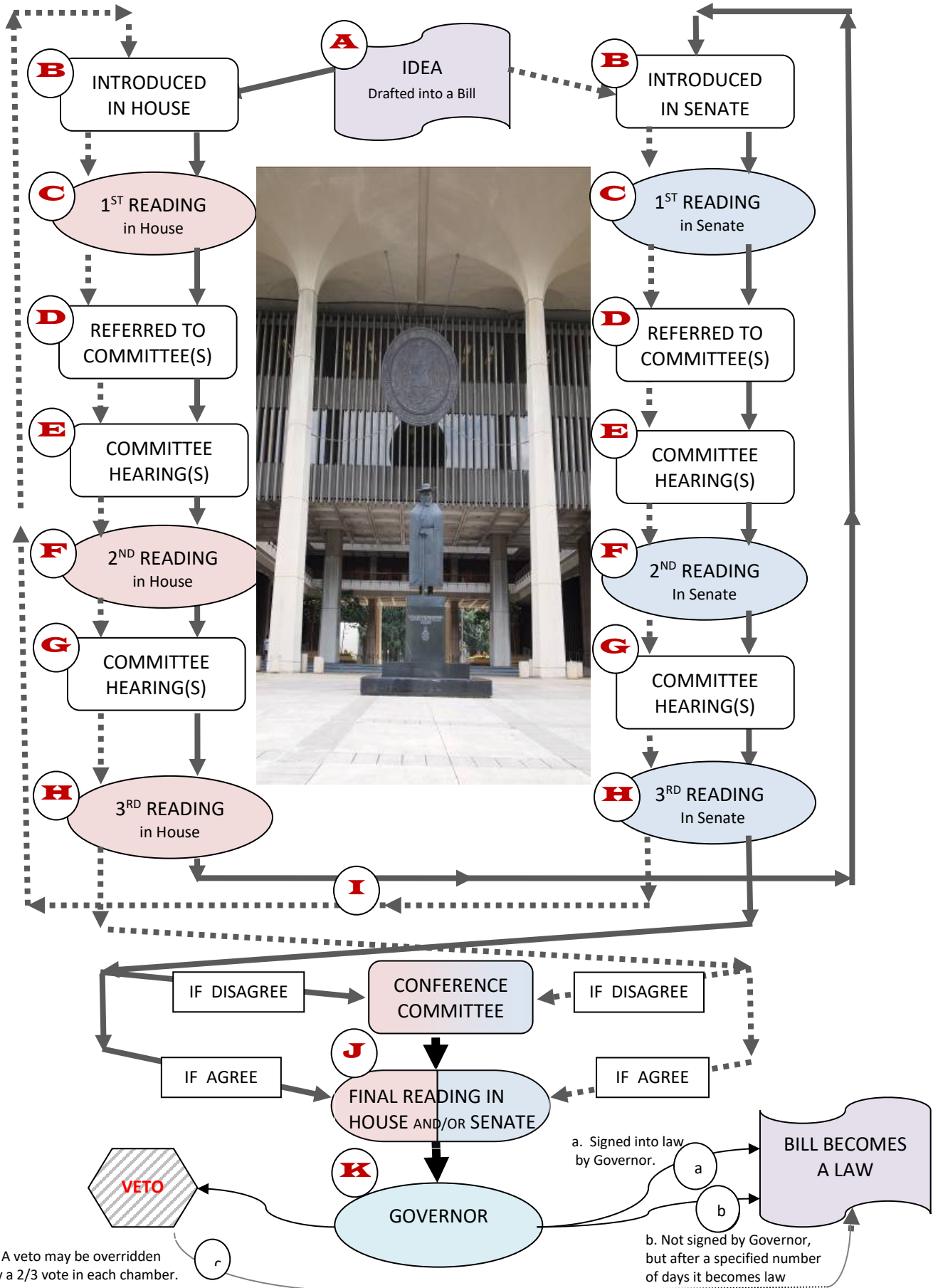
While I had been assigned proxies of 44 owners, the other five candidates, combined, had only 36. The lowest man had just 4. Yep, thanks to a rigged election, he was retained. This happened when our President combined **75** proxies for Board as a 'whole' and **26** which were supposed to be divided between its members. The two amounts add up to 101. As there were four openings, the **101** was multiplied by **4**, due to cumulative voting, which made them good for **404** 'votes'. These were then split between his two friends up for reelection on the Board, which assured their retention. [Owners are clueless about how this chicanery occurs, and are never informed afterwards. It is treated like a 'trade secret'.] Although I have resided at Makaha Surfside, a 454 unit complex in Waianae, for 31+

years, it is only in the last 5 years that our elections have been ruthlessly rigged, thanks to having the category for the Board on the Proxy. It must be stricken to prevent chicanery. I discovered our Board President only had **7** proxies assigned to him by owners, yet, he was able to secretly, in collusion with the Hawaiian Properties manager, poach all owners proxies assigned to the Board to keep his friends on it, and therefore, control of it. (It was surely unethical for those two people to vote to accept them as it was a 'conflict of interest' for them to do so It is, in truth, a nonsensical device created by Community Associations Institute and, somehow, 'sold' to our 1996 legislators as a good thing. Well, it is very good for stealing elections.

This committee with words about Consumer Protection in its title, should respect those words and indeed, protect consumers. Presently we do not have transparency as if that is a bad thing. Keep in mind that last year there was a bill which would make it a mere 'misdemeanor' to falsify association records (which includes stealing elections). It was defeated. Bad message to consumers.

Please pass this bill. There is chicanery occurring in other associations as well, thanks to state disinterest in integrity of association elections. As taxpayers and your constituents we should not be treated like '2nd class' citizens, with no rights.

A BILL'S JOURNEY: Bill to Law



Request for an HOA voting rights Bill for the 2024 session

From: Dale Head (sunnymakaha@yahoo.com)

To: senkim@capitol.hawaii.gov; repaiu@capitol.hawaii.gov

Cc: senshimabukuro@capitol.hawaii.gov; senkeohokalole@capitol.hawaii.gov;
repnakashima@capitol.hawaii.gov; rephashimoto@capitol.hawaii.gov

Date: Saturday, November 11, 2023 at 05:05 PM HST

Dale Arthur Head

1637 Ala Mahina Place Honolulu, HI 96819
(808) 836-1016 sunnymakaha@yahoo.com

Senator Donna Mercado Kim
Representative Micah Pookela Kim Aiu

1. First off, I wish to thank you for introducing **SB1512** and **HB1298** for the **2023** session, regarding HOA members right to cast their own vote. It was not given a **Hearing** after management company lobbyists, who oppose unfettered voting rights for HOA (Home Owners Association) members made targeted donations to kill that legislation, in my opinion.

Please note the attached 'Flow Chart' provided by **Capitol Public Access Room**. This nice piece of artwork does not reflect the importance of commercial donors' influence to abridge voting rights. Perhaps the chart is incomplete. It indicates that after a Bill is introduced and passes 1st **Reading**, that it gets a **Committee Hearing**. Really? It is far too easy for corporate 'Special Interests' to give money to dozens of elected officials, to include Committee Chairs to do their bidding, to the harm of constituents consumer protection and voting rights.

2. When people who don't have several million dollars available to buy a detached house believe that a condominium is affordable, they take out a loan to buy one. Only upon signing a Purchase Agreement are they provided by the Developer with a set of ByLaws, having no clue that their right to vote in any HOA election is made 'conditional', that, they must be physically present in order to cast their own vote. And, the ByLaws make no mention of a 'business model' practiced by many management companies to aggregate Proxies assigned to a Board of Directors, and funnel them to candidates of their choosing, not the owners preference. The only obvious solution to correct this is separating election of Board members out of and away from 'Annual Meetings'. Democracy should be protected, not betrayed for a few hundred or thousands of dollars by legislators. The 'Public', taxpayers, deserve better.

3. I suggest and request the Bill for the **2024** session to include: (a) Prohibition of management companies that handle HOA fees be involved in any way of administration of elections for Boards of Directors, (b) That elections of Board members be achieved by a special meeting for that purpose, which could be a 'hybrid' meeting attended in person and

permit owner(s) participation via an Online platform or even via conference call by phone (there are companies that specialize in that service), and (c) prohibition of 'cumulative voting' as it creates votes out of 'thin air' and lends itself, routinely, to abuse by management companies.

4. More than 20 years ago our *Hawaii Real Estate Commission* basically 'deputized' lobbyists from management companies, mostly lawyers, to overhaul state HOA statute **514a**. They had a great time writing rules the way their industry wanted them. One member on that 'Blue Ribbon Recodification Advisory Committee' was **Mr. Richard Port**, who wrote an "**objection**" citing exclusion of most HOA members from development of the recommendations. His words on 31 December 2003 were 100% true, and, years later, in **2017**, he made similar comments on **HB35** to establish an **Office of Ombudsman**. Note the 2nd & 3rd attachments with his name.

5. The 4th attachment is from **Senator Maile S.L. Shimabukuro**, an email to **Senator Rosalyn Hestor Baker** requesting scheduling of a Hearing in **2019** for **HB347/SB724**. Roz ignored that, after getting many donations from an Aiea attorney opposed to the Bill. It would have deleted from the state approved Proxy Form 'to the Board as a whole' (which, is the #1 administrative tool used to manipulate elections). Note: That Bill was given Hearings in the House where it passed unanimously. And, finally, the 5th attachment is an email, dated 6 February **2023** from **Senator Donna Mercado Kim** to **Senator Jarrett Keohokalole** requesting for a Hearing on **SB1512**, which was not granted.

6. Please make formal request for a Hearing, and copy me on any such email.

Respectfully, Dale Arthur Head



Flow Chart.pdf
77.8kB



Richard Port 31 Dec 2003.pdf
502.5kB



R. Port:HB35.pdf
2.5MB



Shimabukuro.pdf
3MB



Sen Kim.pdf
43.8kB

SB2404

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Meetings; Members; Proxies; Internet; Voting

Description: Prohibits the use of proxies in condominium association voting. Requires associations to allow members to vote by mail and attend and cast votes in association meetings through internet, teleconference, or other electronic transmission technology. Requires associations to mail out paper ballots before any annual or other periodic election of board members.

Companion:

Package: None

Current Referral: CPN

Introducer(s): KIM, FEVELLA, Gabbard

<u>Sort by Date</u>	Status	Text
2/2/2024	S	The committee(s) on CPN has scheduled a public hearing on 02-06-24 9:30AM; CR 229 & Videoconference.
1/22/2024	S	Referred to CPN.
1/22/2024	S	Passed First Reading.
1/19/2024	S	Introduced.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

SB2404 SD1

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Association Meetings; Voting; Proxies; Forms

Description: Repeals the requirement that a standard proxy form authorized by the unit owners' association shall contain a box wherein an owner may indicate that the proxy is given to the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting. Takes effect 7/1/2040. (SD1)

Companion:

Package: None

Current Referral: CPC, JHA

Introducer(s): KIM, FEVELLA, Gabbard

<u>Sort by Date</u>	Status Text
3/8/2024	H Bill scheduled to be heard by CPC on Tuesday, 03-12-24 2:00PM in House conference room 329 VIA VIDEOCONFERENCE.
3/7/2024	H Referred to CPC, JHA, referral sheet 16
3/7/2024	H Pass First Reading
3/5/2024	H Received from Senate (Sen. Com. No. 114) in amended form (SD 1).
3/5/2024	S Passed Third Reading, as amended (SD 1). Ayes, 24; Aye(s) with reservations: Senator(s) Fukunaga, Ihara. Noes, 1 (Senator(s) Rhoads). Excused, 0 (none). Transmitted to House.
2/29/2024	S 48 Hrs. Notice 03-05-24.
2/29/2024	S Report adopted; Passed Second Reading, as amended (SD 1).

2/29/2024	S	Reported from CPN (Stand. Com. Rep. No. 2749) with recommendation of passage on Second Reading, as amended (SD 1) and placement on the calendar for Third Reading.
2/9/2024	S	The committee(s) on CPN recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in CPN were as follows: 4 Aye(s): Senator(s) Keohokalole, Fukunaga, McKelvey, Awa; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Richards.
2/6/2024	S	The committee(s) on CPN deferred the measure until 02-09-24 9:45AM; Conference Room 229.
2/2/2024	S	The committee(s) on CPN has scheduled a public hearing on 02-06-24 9:30AM; CR 229 & Videoconference.
1/22/2024	S	Referred to CPN.
1/22/2024	S	Passed First Reading.
1/19/2024	S	Introduced.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

SB2404 SD1

2019 Archives

You are viewing archived information from 2019

HB347 HD1

Measure Title:	RELATING TO CONDOMINIUMS.
Report Title:	Condominium Associations; Proxy Voting
Description:	Amends the requirements for a condominium association's standard proxy form by deleting the option for a condominium owner to give the proxy to the board as a whole. (HB347 HD1)
Companion:	SB724
Package:	None
Current Referral:	CPH
Introducer(s):	SAIKI

<u>Sort by</u>		<u>Status Text</u>
<u>Date</u>		
3/5/2019	S	Referred to CPH.
3/1/2019	S	Passed First Reading.
3/1/2019	S	Received from House (Hse. Com. No. 33).
2/28/2019	H	Passed Third Reading with Representative(s) Okimoto voting aye with reservations; none voting no (0) and Representative(s) DeCoite excused (1). Transmitted to Senate.
2/28/2019	H	Reported from JUD (Stand. Com. Rep. No. 897), recommending passage on Third Reading.
2/26/2019	H	The committees on JUD recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 8 Ayes: Representative(s) C. Lee, San Buenaventura, Brower, McKelvey, Takayama, Yamane, Thielen; Ayes with reservations: Representative(s) Say; Noes: none; and 3 Excused: Representative(s) Creagan, Lowen, Morikawa.
2/22/2019	H	Bill scheduled for decision making on Tuesday, 02-26-19 2:00PM in conference room 325.
2/22/2019	H	The committee(s) on JUD recommend(s) that the measure be deferred until Tuesday, 02-26-19.
2/20/2019	H	Bill scheduled to be heard by JUD on Friday, 02-22-19 2:05PM in House conference room 325.
2/13/2019	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on JUD with none voting aye with reservations; none voting no (0) and Representative(s) Holt, McDermott, Nakamura, Ward excused (4).

2/12/2019	H	Deferred one day 02-13-19.
2/12/2019	H	Reported from CPC (Stand. Com. Rep. No. 251) as amended in HD 1, recommending passage on Second Reading and referral to JUD.
2/7/2019	H	The committees on CPC recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 11 Ayes: Representative(s) Takumi, Ichiyama, Aquino, Belatti, Cabanilla Arakawa, Cachola, Har, Kong, Mizuno, Onishi, Matsumoto; Ayes with reservations: none; Noes: none; and Excused: none.
2/5/2019	H	Bill scheduled for decision making on Thursday, 02-07-19 2:30PM in conference room 329.
2/5/2019	H	The committee(s) on CPC recommend(s) that the measure be deferred until 02-07-19.
1/30/2019	H	Bill scheduled to be heard by CPC on Tuesday, 02-05-19 2:00PM in House conference room 329.
1/22/2019	H	Referred to CPC, JUD, referral sheet 3
1/22/2019	H	Introduced and Pass First Reading.
1/18/2019	H	Pending introduction.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

HB347 HD1

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

Date: September 19, 2023

Subject: Uncovering and Addressing Financial Discrepancies

Dear Makaha Surfside (MSS) Owners,

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

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

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

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

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

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

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

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

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

Warm regards,

Board of Directors
Mahaka Surfside

SB-2404-SD-1

Submitted on: 3/9/2024 5:22:23 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

I OPPOSE S.B. 2404, SD1 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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. This has been the preferred choice of many condominium owners for 40 years. Without good cause or justification, this bill will eliminate the requirement that proxies contain a box allowing owners to give their proxies to the board as a whole.

The proponents of eliminating the “board as a whole box” on proxies have argued that the box gives too much power to condominium boards. However, they completely ignore and disregard the fact that owners who check the box do so because they trust their boards and want their boards to have the power to cast their vote. Owners are free to check any of the boxes on the proxy. The “board as a whole box” is merely one of several options. The Legislature should not interfere with the right of owners to give their proxies to whom they please simply because a small group of owners are unhappy with their boards.

Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-

printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

If this bill is adopted, many owners who would otherwise give their proxies to their boards may decide not to return a proxy when they don’t see the “board as a whole” box because they don’t trust anyone else enough to name them as their proxy. If this happens, associations will have a difficult time achieving a quorum because proxies given to the board as a whole generally make up a significant part of the quorum. While the proponents may argue that owners are still free to give their proxies to the directors present at the meeting with the vote to be shared with each director receiving an equal percentage, this disregards the fact that directors individually may vote differently from the board as a whole and owners may not be willing to choose that option.

The proponents of this bill may try to downplay the argument about the lack of a quorum by arguing that people who don’t know to whom to give their proxies can simply check the quorum only box, this position ignores the fact that quorum only proxies cannot be voted on issues that arise at a meeting or for the election of directors. A large number of “quorum only” proxies will make it difficult to achieve the requisite percentage vote on a number of issues that could arise at an association meeting including, in many instances, the adoption of a standard annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

It is simply unreasonable to make it more difficult for associations to conduct business because a minority group of owners are unhappy with their boards when the fact is that a great number of condominium owners are happy with their boards as evidenced each year by the fact that they give their proxies to the board.

Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Anne Anderson

SB-2404-SD-1

Submitted on: 3/9/2024 5:32:55 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

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For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Joe Taylor

SB-2404-SD-1

Submitted on: 3/9/2024 5:36:03 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

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Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

John Toalson

SB-2404-SD-1

Submitted on: 3/9/2024 10:59:18 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

Aloha,

Condo Owner at Pearl One for over 30 years, I strongly support Sb2404 SD1.

My Board President uses proxies given to the Board as a whole to keep Board Members who do not do their fiduciary duty to all Owners. Especially when it come to finances & large costly projects.

Mahalo,

Edwina Spallone

SB-2404-SD-1

Submitted on: 3/10/2024 4:38:32 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Targgart	Individual	Oppose	Written Testimony Only

Comments:

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

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interfere with the right of owners to give their proxies to whom they please simply because a small group of owners are unhappy with their boards.

Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

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Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Michael Targgart

SB-2404-SD-1

Submitted on: 3/10/2024 5:58:27 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kim Billon	Individual	Oppose	Written Testimony Only

Comments:

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Respectfully submitted,

Kim Billon

SB-2404-SD-1

Submitted on: 3/10/2024 8:04:37 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Brad Peterson	Individual	Oppose	Written Testimony Only

Comments:

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

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Respectfully submitted,
Brad Peterson

Testimony in Support of SB2404 SD1

Submitted for: Consumer Protection and Commerce Committee Hearing, scheduled for Tuesday, March 12, 2024 at 2:00 PM.

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

My name is Gregory Misakian, and I currently serve 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.

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 on 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

Candidate Name	Contributor Type	Contributor Name	Date	Amount	Aggregate	Employer	Occupation
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
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

Candidate Name	Contributor Type	Contributor Name	Date	Amount	Aggregate	Employer	Occupation
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		
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		

Candidate Name	Contributor Type	Contributor Name	Date	Amount	Aggregate	Employer	Occupation
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		
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		

Candidate Name	Contributor Type	Contributor Name	Date	Amount	Aggregate	Employer	Occupation
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 Philip S Nerney LLLC	06/26/2012	\$300.00	\$300.00		
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.

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."

Self-Governed (A term loosely and incorrectly applied.)

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.

Amendment Requested

I am requesting that you amend SB2404 SD1 to also remove the option below:

~~(D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage;~~

It should be 100% clear that if there is a rogue majority Board who are abusing power (which is the case at the Keoni Ana AOA, where I serve as a Director), that giving a proxy to the “Directors Present,” is almost the same as giving it to the “Board as a Whole.”

I ask you to please pass SB2404 SD1 with the amendment requested, which is intended to help over 1/3 of the population of Hawaii have fair elections at their condominium associations.

Mahalo,

Gregory Misakian

SB-2404-SD-1

Submitted on: 3/10/2024 5:02:07 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

1. 2404, SD1 is a bad bill. It will eliminate the requirement that proxies contain a box allowing owners to give their proxies to the board as a whole, which is the box that a great number of owners check. This box has been on proxies since the 1980s. You have all seen it. It looks like this:

THE BOARD OF DIRECTORS AS A WHOLE WITH THE VOTE TO BE MADE ON THE BASIS OF THE PREFERENCE OF THE MAJORITY OF THE DIRECTORS PRESENT AT THE MEETING;

1. owners check this box because they are happy with the decisions of their boards and the way their boards manage their associations. The proponents of the bill argue that this box gives too much power to condominium boards. However, they completely ignore and disregard the fact that owners who check this box do so because they trust their boards and want their boards to cast their vote.

While this bill does not eliminate the box on proxies allowing owners to give their proxies to “those directors present at the meeting with the vote to be shared with each director receiving an equal percentage” (as does H.B. 2607 which will come up for hearing soon), rest assured that if the board as a whole box is eliminated, the board equal box will be next.

1. this bill is adopted, many owners who would otherwise give their proxies to their boards may decide not to return a proxy or check the quorum only box because they don’t trust anyone else enough to name them as their proxy. The lack of a quorum or too many “quorum only” proxies will prevent associations from taking needed action, including the adoption of the annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

1. House Committee on Consumer Protection and Commerce is the same committee that passed out H.B. 2067 which will serve to delete both the board as a whole and board equal boxes on proxies. This means that this committee is already predisposed to pass S.B. 2404, SD1. **Accordingly, associations are already facing an uphill battle and will have no chance of defeating this bill if more people do not submit testimony. fate of condominium proxies is in your hands.**

Kathy Kosec

Committee on Consumer Protection & Commerce

Tuesday, March 12, 2024 @ 2:00 PM

SB 2404 SD1: Proxies

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

Voting as a Whole was recommended by a “Blue Ribbon” Committee (made up of almost entirely of the trade industry) in the early 2000’s with the intention to reduce the concentration of proxies that a Board President would receive. However, while this was possibly well-intentioned, it has done nothing to solve the problem of a concentration of proxies: proxies are still concentrated in the Board with minority voices drowned out.

I have given up trying to participate in my Association through the Board because it is unrealistically difficult to gather enough proxies to outnumber the concentration of proxies that the Board receives. At my last Association meeting, one of my neighbors, who is a longtime resident and former Board Member, whispered to me that her voice doesn’t matter anymore because of the concentration of proxies that the Board receives.

In fact, a recent “study” by the Hawai’i State Association of Parliamentarians indicated that in most Associations, 88% of the proxies go to the Board. How is an individual Owner supposed to campaign for change against those types of incumbent advantages???

Additionally, the trade industry likes to say that this topic comes up every year by a few disgruntled individuals who cannot get elected to their Board and every year, it gets defeated. This is a bad-faith misrepresentation by the trade industry. To my knowledge, I am the only individual in support of this Bill who has not served on my Board. All other supporters are either current or former Board members. Also, while previous Bills never became law, they were always met with interest and during their deferral, the Legislators noted that this was an important topic that deserves further consideration. The Bill you have before you now is a trimmed down and simple Bill that is a good Bill and deserves to move forward.

EDIT: I kindly ask that you remove the new option C to give a proxy to the Board in equal parts:

~~(D)] (C) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage;~~

Thank you for the opportunity to testify,

Jeff Sadino

SB-2404-SD-1

Submitted on: 3/10/2024 9:04:51 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

I OPPOSE S.B. 2404, SD1 for the following reasons:

Associations are legal entities that act by and through their boards of directors. 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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 proponents of eliminating the “board as a whole box” on proxies have argued that the box gives too much power to condominium boards. However, they completely ignore and disregard the fact that owners who check the box do so because they trust their boards and want their boards to have the power to cast their vote. Owners are free to check any of the boxes on the proxy. The “board as a whole box” is merely one of several options. The Legislature should not interfere with the right of owners to give their proxies to whom they please simply because a small group of owners are unhappy with their boards.

Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

1. If this bill is adopted, many owners who would otherwise give their proxies to their boards may decide not to return a proxy when they don’t see the “board as a whole” box

because they don't trust anyone else enough to name them as their proxy. If this happens, associations will have a difficult time achieving a quorum because proxies given to the board as a whole generally make up a significant part of the quorum. While the proponents may argue that owners are still free to give their proxies to the directors present at the meeting with the vote to be shared with each director receiving an equal percentage, this disregards the fact that directors individually may vote differently from the board as a whole and owners may not be willing to choose that option.

2. Proponents of this bill may try to downplay the argument about the lack of a quorum by arguing that people who don't know to whom to give their proxies can simply check the quorum only box, this position ignores the fact that quorum only proxies cannot be voted on issues that arise at a meeting or for the election of directors. A large number of "quorum only" proxies will make it difficult to achieve the requisite percentage vote on a number of issues that could arise at an association meeting including, in many instances, the adoption of a standard annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Carol Walker

TO: Hawaii State Legislators

FROM: Sheldon S Y Lee

Re: My testimony in support of SB2404

I am in support of this bill concerning proxies at condominiums. My main points are:

1. Proxies could still be used to obtain a quorum at meetings of condominium associations.
2. There may be associations that are run well, with directors who are honest and competent. At others, there may be corruption.
3. Passage of this bill could promote transparency on the part of condominium boards and managers.
4. It could also encourage condominium owners to participate more in the communities where they live.

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 have been other cases in the news.

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.

I hope that our elected representatives will become more aware of what is happening at condominiums in Hawaii.

Thank you.

Lourdes Scheibert
920 Ward Ave
Honolulu, Hawaii. 96814

March 10, 2024

To: Committee on Consumer Protection & Commerce
Committee Chair Rep Mark M. Nakashima, Vice Chair Rep Jackson Sayama and
members of the committee

RE: Testimony SB2404 SD1

The description of SB2404, SD1: Repeals the requirement that a standard proxy form authorized by the unit owners' association shall contain a box wherein an owner may indicate that the proxy is given to the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting. Takes effect 7/1/2040. (SD1)

This description is a mistake.

I am Lourdes Scheibert and I support, SB2404 SD1 **deletes**
Proxy to the board as a whole with an amendment:

(C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or

I believe an amendment of SB2404 SD1 should include **deleting** the proxy :

(D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage.

The primary reason for my proposal to remove both board proxies is due to the board of directors' inability to properly evaluate their buildings' infrastructure and prioritize necessary maintenance and repairs.

Moreover, the board holds a significant number of cumulative votes due to the two proxies assigned to them. This practice enables them to habitually vote for themselves, which infringes on the rights of new or other owners who are interested in seeking a position on the board.

This also provides the board with the chance to use proxies to approve resolutions for altering the Declaration, By-laws, House Rules, and the common area without the required 67% of proxies and owners present at the annual meeting. According to my documents, the board does not have this authority; instead, these resolutions must be signed by the owners with 67% approval.

The boards' incompetence is evident in the previously inadequate Reserve Studies. The quality of a Reserve Study is indeed dependent on the expertise and integrity of the person preparing it. In many cases the task is delegated to the management company. However, the board fiduciary duty is to approve a well planned Reserve Study in turn develop a well plan Budget.

It was in 1997 when the cash flow Reserve was legislated into 514A. It would be interesting to know who was behind that legislation. Its interested to note that the Hawaii Administrative Rule does not include cash flow reserves rather it supports percentage Reserve. There is an inconsistency between the Hawaii Administrative Rule and HRS 514A, today HRS 514B

Today, CAI updated their Reserve Study policy. In part as a result of the collapse of the Champlain Towers South in Florida. 2023 Community Associations Institute Reserve Study Standards, Page 10:

*Establishing a reserve funding goal of allowing the reserve cash balance to approach but never fall below zero during the cash flow projection. This is the funding goal with the greatest risk of being prepared to fund future repair and replacement of major components, and **it is not recommended as a long-term solution/plan.** Baseline funding may lead to project delays, the need for a special assessment, and/or a line of credit for the community to fund needed repairs and replacement of major components.*

Regardless of whether it involves percentage or cash, the condominium leadership has persistently stood by the board of directors and their actions, using the "volunteer" directors tag as a shield. These volunteer directors have always believed, and still do, that their responsibility is passed on once they delegate tasks to the management company. The condominium leadership also endorses the idea that a board member's education is optional and not necessary to mandate, thus allowing directors to govern a community without requiring them to educate themselves.

Consequently:

New Condominium Reserve Study Requirements Under Act 62

Last year, the legislature enacted Act 62, which became effective on January 1, 2023. Act 62 amended, among other sections of the condominium statute, HRS § 514B-83, to now require that the breakdown of annual maintenance fees required to be provided in a developer's public report also include the annual reserve contributions based on a reserve study. This reserve study requirement applies to any new public report or

A Reserve Study Disclosures Summary-Standard Form HRS 514B. This form is to be attached to the Annual Budget Distributed to owners. (Attached)

You don't have to be a genius to realize that fixing a leak is a better option than overlooking it. Likewise, you don't need a Reserve Study to tackle problems such as plumbing pipe failures, building spalling, window replacement to name a few.

Its urgent to bring to your attention a 2023, mandatory electrical maintenance standards that will impact Hawaii Building Management. For 50 years performance of the National Fire Protection Assn. standard for electrical preventive maintenance was merely a recommendation but now compliance to a new standard approved by the American National Standards Institute is enforceable, and OSHA can issue citations for non-compliance. As presented by Mike Dillard, CEO, Massive Kinetiks Contracting at the Blaisdell Hawaii Trade Show, March 7, 2024.

In Hawaii, developers in the 1960s and 1970s preferred to use Federal Pacific Switchgear. This equipment, in many properties, was never maintained and was not included in the Reserves for replacement. For many years now, the Federal Pacific company has ceased operations, rendering the equipment obsolete and leaving no available repair parts.

Dillard noted that if a hazard is being willfully created (meaning if the board defers maintenance), citations for violations are issued. As a result, the fines have escalated from over \$16,000.00 to \$161,322.00. Moreover, if the property owns the transformers, the replacement cost can run into millions. It is crucial for all Association boards to prioritize this issue. I have been urging my board to maintain our Federal

Pacific Switchgear since 2011, and as recently as February 2024. However, the motion was deferred.

I urge you to completely eliminate the shared and whole proxies. If not, you are endorsing Association Boards that have evidently failed in their fiduciary duty to protect and maintain the building, as well as ensure the safety of the owners and residents.

I request that all Association members be granted the right to govern our Association collectively, rather than being governed by a select few veteran board members. Legislation provided us with the proxy to the board as a whole and shared. Legislation can also revoke it, as it has not benefited the condominium community as intended.

Thank-you,

Lourdes Scheibert
Condominium Owner

Reserve Study Disclosures Summary- Standard Form §HRS 514B -

THIS FORM IS TO BE ATTACHED TO THE ANNUAL BUDGET DISTRIBUTED TO OWNERS

Prepared By (PRINTED)

Title Or Position

Date Prepared

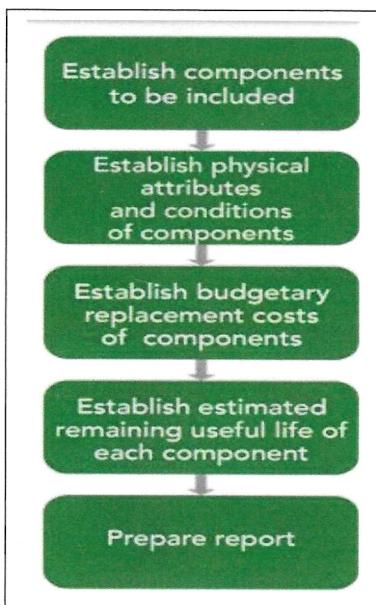
A. Current Independent Reserve Study...			
1.	Most Recent Reserve Study Date:	enter date	
2.	Most Recent Reserve Study Preparer:	Name of Company and person	
3.	Most Recent Reserve Study Level:	<input type="checkbox"/> Level 1 <input type="checkbox"/> Level 2 <input type="checkbox"/> Level 3	
4.	Last Level (1) One Full On-Site Reserve Study by:	Name of Company and Person	Date: Enter date
B. If the Current Reserve Study is Board Prepared as to §HRS 514B -148(5)			
5.	Last Independent Review Name: Name of Company and Person	Date:	§HRS 514B – 148(5)
6.	Independent Reviewer Industry Credential:		
7.	Independent Reviewer Conclusion(s):	Explain	
8.	If any major components in the previous Reserve Study were removed, what and why: Explain	§HRS 514B – 148(6)(B)	
C. Fully Funded Reserves Should Be (Per Reserve Study):			
		\$	(Line 1)
9.	Actual Cash Reserves Are:	\$	(Line 2) §HRS 514B – 148(4)
D. Current Reserves Percent Funded:			
		%	Line 2 ÷ by Line 1
10.	Current Unfunded Reserves;	\$	(Line 3) Line 1 – (Minus)Line 2
11.	Current Unfunded Reserves per # of Association Unit/s:	# units: \$	(Line 4) Line 3 ÷ by Line 4
E. Reserve Study for Reserve Funding Year:			
12.	Reserve Funding Methodology Used:	<input type="checkbox"/> Cash Flow OR <input type="checkbox"/> % Percent Funded	
13.	Budgeted Year enter year Reserve Funding:	§HRS 514B – 148(8)	
14.	Reason for Funding Difference, if any?	§HRS 514B – 148(b)	
15.	Presently Projected Regular and Special Reserve Assessments Funding Over the Next 30 Years:	\$	§HRS 514B – 148(6)(C)
16. Past Activity Affecting Current Reserve Status:			
17.	Reserve Study for Year Enter Year Reserve Funding:	\$	§HRS 514B – 148(6)(D)
18.	Actual Enter Year Reserve Funding:	\$	
19.	If less, what is the impact on Future Funding?	Explain	
20.	Current Year (enter year) Actual Borrowing from Reserves:	\$	
21.	To Pay Day-to-Day Operating Expenses (explain):		
22.	Are Borrowings Repayment Budgeted for next year Enter year?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
23.	If "NO", When will they be Repaid?		

As buildings age, increases in assessments can be expected. Failure to adequately fund reserves on an annual basis may result in the deferral of needed repairs, that can equate to periodic special assessments in later years.

The Basic Levels of a Reserve Study	LEVEL I	LEVEL II	LEVEL III	LEVEL IV
	FULL RESERVE STUDY	RESERVE STUDY UPDATE WITH SITE-VISIT	RESERVE STUDY UPDATE WITHOUT SITE-VISIT	PRELIMINARY, COMMUNITY NOT YET CONSTRUCTED
ONSITE VISUAL INSPECTION	✓	✓		
PRE-INSPECTION MEETING	✓	✓		
COMPONENT INVENTORY	Established	Re-Assessed/Evaluated	Reflects prior study	From site plans
COMPONENT QUANTITIES & MEASUREMENTS	Established	Re-Assessed/Evaluated	Reflects prior study	From site plans
CONDITION ASSESSMENTS	Based on visual observation	Based on visual observation	As reported by association	
USEFUL LIFE ESTIMATES	Based on engineer's condition assessment	Based on engineer's condition assessment	Based on client's reported condition	Based on industry standards
VALUATION/COST ESTIMATES	Established for each reserve component	Re-evaluated for each reserve component	Re-evaluated for each reserve component	Established for each reserve component
ELECTRONIC REPORT	Comprehensive report with component detail	Comprehensive report with component detail	Executive summary overview	Executive summary overview
EXCEL SPREADSHEETS	✓	✓	✓	✓
SUPPORT WITH IMPLEMENTATION OF REPORT	✓	✓	✓	✓
COMPLIMENTARY REPORT REVISION	✓	✓		

HB2272 HD1 SD1 CD1/Act 062 signed by Governor Green 6/17/2022 (msg 1162) effective January 1, 2023

Act 62 amended HRS § 514B-148, which applies to budgets that are adopted and distributed or made available to unit owners at least annually by the condominium's board of directors. Under the amended HRS § 514B-148, the estimated replacement reserves included in the condominium association's annual budget must be based on a reserve study performed by the association and must be reviewed by an independent reserve study preparer. The study must be reviewed or updated at least every three years.



Components The individually listed projects within the physical analysis which are determined for inclusion using the process described within the component inventory.

These components form the building blocks for the reserve study. Components are selected to be included in the reserve study based on the following **three-part test**:

1. The association has the obligation to maintain or replace the existing element.
2. The need and schedule for this project can be reasonably anticipated.
3. The total cost for the project is material to the association, can be reasonably estimated, and includes all direct and related costs.

CAI Reserve Study Standards (July 2023)

As buildings age, increases in assessments can be expected. Failure to adequately fund reserves on an annual basis may result in the deferral of needed repairs, that can equate to periodic special assessments in later years.

SB-2404-SD-1

Submitted on: 3/11/2024 4:40:08 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

I OPPOSE S.B. 2404, SD1 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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. This has been the preferred choice of many condominium owners for 40 years. Without good cause or justification, this bill will eliminate the requirement that proxies contain a box allowing owners to give their proxies to the board as a whole.

The proponents of eliminating the “board as a whole box” on proxies have argued that the box gives too much power to condominium boards. However, they completely ignore and disregard the fact that owners who check the box do so because they trust their boards and want their boards to have the power to cast their vote. Owners are free to check any of the boxes on the proxy. The “board as a whole box” is merely one of several options. The Legislature should not interfere with the right of owners to give their proxies to whom they please simply because a small group of owners are unhappy with their boards.

Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-

printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

If this bill is adopted, many owners who would otherwise give their proxies to their boards may decide not to return a proxy when they don’t see the “board as a whole” box because they don’t trust anyone else enough to name them as their proxy. If this happens, associations will have a difficult time achieving a quorum because proxies given to the board as a whole generally make up a significant part of the quorum. While the proponents may argue that owners are still free to give their proxies to the directors present at the meeting with the vote to be shared with each director receiving an equal percentage, this disregards the fact that directors individually may vote differently from the board as a whole and owners may not be willing to choose that option.

While proponents of this bill may try to downplay the argument about the lack of a quorum by arguing that people who don’t know to whom to give their proxies can simply check the quorum only box, this position ignores the fact that quorum only proxies cannot be voted on issues that arise at a meeting or for the election of directors. A large number of “quorum only” proxies will make it difficult to achieve the requisite percentage vote on a number of issues that could arise at an association meeting including, in many instances, the adoption of a standard annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

It is simply unreasonable to make it more difficult for associations to conduct business because a minority group of owners are unhappy with their boards when the fact is that a great number of condominium owners are happy with their boards as evidenced each year by the fact that they give their proxies to the board.

Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

SB-2404-SD-1

Submitted on: 3/11/2024 6:34:34 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

I oppose this bill.

SB-2404-SD-1

Submitted on: 3/11/2024 7:28:30 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

I OPPOSE S.B. 2404, SD1 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," because their faith and confidence is in the board. For those owners who do not have confidence in their association's board of directors or prefer to give their proxies to someone else, 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. This has been the preferred choice of many condominium owners for 40 years. Without good cause or justification, this bill will eliminate the requirement that proxies contain a box allowing owners to give their proxies to the board as a whole.

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Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,
Lance Fujisaki

SB-2404-SD-1

Submitted on: 3/11/2024 8:30:00 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

I OPPOSE S.B. 2404, SD1 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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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Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-

printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

If this bill is adopted, many owners who would otherwise give their proxies to their boards may decide not to return a proxy when they don’t see the “board as a whole” box because they don’t trust anyone else enough to name them as their proxy. If this happens, associations will have a difficult time achieving a quorum because proxies given to the board as a whole generally make up a significant part of the quorum. While the proponents may argue that owners are still free to give their proxies to the directors present at the meeting with the vote to be shared with each director receiving an equal percentage, this disregards the fact that directors individually may vote differently from the board as a whole and owners may not be willing to choose that option.

While proponents of this bill may try to downplay the argument about the lack of a quorum by arguing that people who don’t know to whom to give their proxies can simply check the quorum only box, this position ignores the fact that quorum only proxies cannot be voted on issues that arise at a meeting or for the election of directors. A large number of “quorum only” proxies will make it difficult to achieve the requisite percentage vote on a number of issues that could arise at an association meeting including, in many instances, the adoption of a standard annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

It is simply unreasonable to make it more difficult for associations to conduct business because a minority group of owners are unhappy with their boards when the fact is that a great number of condominium owners are happy with their boards as evidenced each year by the fact that they give their proxies to the board.

Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Paul A. Ireland Koftinow

SB-2404-SD-1

Submitted on: 3/11/2024 8:33:08 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Serena Humay	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE S.B. 2404, SD1 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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. This has been the preferred choice of many condominium owners for 40 years. Without good cause or justification, this bill will eliminate the requirement that proxies contain a box allowing owners to give their proxies to the board as a whole.

The proponents of eliminating the “board as a whole box” on proxies have argued that the box gives too much power to condominium boards. However, they completely ignore and disregard the fact that owners who check the box do so because they trust their boards and want their boards to have the power to cast their vote. Owners are free to check any of the boxes on the proxy. The “board as a whole box” is merely one of several options. The Legislature should not interfere with the right of owners to give their proxies to whom they please simply because a small group of owners are unhappy with their boards.

Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-

printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

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While proponents of this bill may try to downplay the argument about the lack of a quorum by arguing that people who don’t know to whom to give their proxies can simply check the quorum only box, this position ignores the fact that quorum only proxies cannot be voted on issues that arise at a meeting or for the election of directors. A large number of “quorum only” proxies will make it difficult to achieve the requisite percentage vote on a number of issues that could arise at an association meeting including, in many instances, the adoption of a standard annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

It is simply unreasonable to make it more difficult for associations to conduct business because a minority group of owners are unhappy with their boards when the fact is that a great number of condominium owners are happy with their boards as evidenced each year by the fact that they give their proxies to the board.

Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Serena Humay

SB-2404-SD-1

Submitted on: 3/11/2024 8:37:03 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

I OPPOSE S.B. 2404, SD1 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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. This has been the preferred choice of many condominium owners for 40 years. Without good cause or justification, this bill will eliminate the requirement that proxies contain a box allowing owners to give their proxies to the board as a whole.

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Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-

printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

If this bill is adopted, many owners who would otherwise give their proxies to their boards may decide not to return a proxy when they don’t see the “board as a whole” box because they don’t trust anyone else enough to name them as their proxy. If this happens, associations will have a difficult time achieving a quorum because proxies given to the board as a whole generally make up a significant part of the quorum. While the proponents may argue that owners are still free to give their proxies to the directors present at the meeting with the vote to be shared with each director receiving an equal percentage, this disregards the fact that directors individually may vote differently from the board as a whole and owners may not be willing to choose that option.

While proponents of this bill may try to downplay the argument about the lack of a quorum by arguing that people who don’t know to whom to give their proxies can simply check the quorum only box, this position ignores the fact that quorum only proxies cannot be voted on issues that arise at a meeting or for the election of directors. A large number of “quorum only” proxies will make it difficult to achieve the requisite percentage vote on a number of issues that could arise at an association meeting including, in many instances, the adoption of a standard annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

It is simply unreasonable to make it more difficult for associations to conduct business because a minority group of owners are unhappy with their boards when the fact is that a great number of condominium owners are happy with their boards as evidenced each year by the fact that they give their proxies to the board.

Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Laura Bearden

SB-2404-SD-1

Submitted on: 3/11/2024 9:14:21 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

Aloha,

Members of the legislation, please hear what I have to say about this proposed bill.

SB 2404 - this bill is posed to change the proxy form used for decades to allow community associations to conduct business at the annual owners meetings. The proposed bill will significantly cripple the industry. Voting and how an owner chooses to vote or relay their voting power should not be minimized to only a couple of options.

In most cases owners are satisfied with the board they have elected and the job they are doing. Why take away the option for owners who can't attend their annual meeting in person from giving their proxy to the Board - either as a majority or equal?

Seems to me that you have all been getting the wrong message from a minority of people who chose to purchase in a communal living environment. Those perhaps who do not know how that system is designed to operate and do not want to take the time to learn the process.

Association governing documents allow for processes to be taken when an owner believes they need to change something for their individual community. Or perhaps they had the rules used against them personally and they are retaliating against their association by pushing legislative changes that affect ALL communities. These processes include the annual meeting procedures.

I request that you do not pass legislation that limits or restricts further owners rights in the handling of their vote(s) at their annual owners meeting. Please vote against SB1404.

Submitted by,

Laurie Sokach AMS, PCAM

Community Association Manager of 27 years

SB-2404-SD-1

Submitted on: 3/11/2024 9:25:40 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

I oppose this measure. Mahalo.

SB-2404-SD-1

Submitted on: 3/11/2024 10:20:49 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

I am a condo owner and board member of a Honolulu high rise. I intend to testify via zoom, if I am not detained at a prior engagement. This is testimony in strong opposition to SB2404.

“In the late 1990’s the Manoa Neighborhood Board took a position in a private business transaction relating to the former Manoa Finance Building owned by Ukumaruku Corporation. As a result of the Manoa Neighborhood Board public meeting and letters, the bank that had signed a contract for the lease of the building cancelled the contract.

“Ukumaruku brought a lawsuit against the Manoa Neighborhood Board members individually, and the City Corporation counsel at the time refused to defend them, because their actions interfered with a private business transaction and use of private property, which legal, and were outside the scope of their authority.

“As a result of that case, a City policy was established whereby City boards and employees were instructed to refrain from any actions that could be interpreted as interfering with a private contract or business relations. The lawsuit was settled by personal payments by the Manoa Neighborhood Board members to Ukumaruku.”

The above quote is from testimony David Arakawa, who was Corporation Counsel from 1996 to 2004, provided on HB2539, HD1, on March 20, 2018.

Fast forward to today. Several neighborhood boards, including Ala Moana-Kakaako (Reso 2023-02, Feb. 28, 2023), McCully-Moilili (Reso 2023-09, Sept. 7, 2023), Waikiki (Reso. 2023-07, July 11, 2023), and Makiki-Tantalus (Reso 2024-01, Jan. 18, 2024), passed resolutions in the guise of supporting consumer protection bills for condo owners whereby proxy voting would be eliminated and only in person or mail in ballot voting would be allowed. Manoa Redux.

Approximately one third of the population lives in condos. Condominium ownership is

transferable. **Condominium ownership is a private agreement between the Condominium Association, its owners, and other residents and tenants.** There may be a significant financial interest in the property. The condo associations are governed by their house rules, bylaws, and declarations. They also are subject to various state laws. By inserting themselves in the operations of the **condominiums throughout the State of Hawaii**, the neighborhood boards and their members are interfering with a private business transaction, the election of directors and other items that may come up before them—engaging a property manager, approval of new business proposed by an owner or the board, adoption of the IRS tax rollover resolution. If the latter is not passed due to lack of quorum, the IRS may determine that taxes are due.

The Unintended Consequences of Amending Hawaii Condo Laws

The passage of proxy voting legislation would put all associations in a precarious position.

By Lynne Matusow

from Civil Beat, February 22, 2024

Without proxies given to the board, many association meetings may not have quorum if these options are removed. The larger management companies report a majority of associations that met in the first two months of this year that had a quorum prior to the meeting would not have had a quorum if there were no board majority/equal proxies turned in.

No quorum means no meeting. No meeting means no election. No meeting means board members will continue to serve until the next annual meeting. No meeting means a tax resolution cannot be adopted.

This resolution 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. If the resolution is not adopted, associations may be required to pay tax on income that would not otherwise be taxable.

Condos are peoples homes. In many instances this is their largest investment. Senate Bill 2404 will eliminate an owner's choice to select board majority on a proxy. House Bill 2067 will eliminate an 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."

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).

Both bills must be defeated.

Owners express confidence in their board by exercising their choice for board majority or board equal.

Often they do not know the names of the board members or their neighbors. Often they do not know who will be attending the meeting.

Quorum Problems

There are almost 400 units in my building. Seventy or so owners, less than 20% of the membership, attended the 2023 annual meeting. Without the proxy options, we would not have had quorum.

At my association's annual meeting owners have suggested amendments to the governing documents. Two recent amendments banning smoking on the property and regarding responsibility for repairing and replacing the window walls (glass and frames) were the result of owner concerns at annual meetings.

The latter received the requisite approval of 67% of owners in less than eight weeks. Had their been no quorum there would not have been a meeting nor discussions leading to these provisions.

My association does an independent reserve study every three years, as required by state law. This results in adequate portions of maintenance fees dedicated to reserves, obviating the need for large financial assessments that would place a burden on the owners, especially seniors and others on fixed incomes.

This year approximately 45% of our maintenance fees are dedicated to reserves and the balance to operating expenses. If other associations are not following the law and keeping reserves at low levels it is because of pressure from the homeowners, who do not want to pay more in maintenance fees.

The many associations with hundreds of thousands of owners who are following the law should not be penalized by the actions of the few.

The passage of these two bills will put all associations in a precarious position. They must be defeated.

End of Civil Beat Commentary.

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

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

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

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

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

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

If this bill is adopted, many owners who would otherwise give their proxies to their boards may decide not to return a proxy or check the quorum only box because they don't trust anyone else enough to name them as their proxy. As you know, the percent of Hawaii residents who vote in the primary and general elections, including yours, is abysmal. Do you really think that reducing the number of proxy options will increase participation? Legislators who own condos will also suffer the unintended consequences. Hundreds of thousands of property owners will be hurt.

Please do not restrict voting in Hawaii. Please defer this bill.

SB-2404-SD-1

Submitted on: 3/11/2024 10:27:38 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Ayson	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill.

SB-2404-SD-1

Submitted on: 3/11/2024 11:44:37 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

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

I OPPOSE S.B. 2404, SD1 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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. This has been the preferred choice of many condominium owners for 40 years. Without good cause or justification, this bill will eliminate the requirement that proxies contain a box allowing owners to give their proxies to the board as a whole.

The proponents of eliminating the “board as a whole box” on proxies have argued that the box gives too much power to condominium boards. However, they completely ignore and disregard the fact that owners who check the box do so because they trust their boards and want their boards to have the power to cast their vote. Owners are free to check any of the boxes on the proxy. The “board as a whole box” is merely one of several options. The Legislature should not interfere with the right of owners to give their proxies to whom they please simply because a small group of owners are unhappy with their boards.

Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

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difficult time achieving a quorum because proxies given to the board as a whole generally make up a significant part of the quorum. While the proponents may argue that owners are still free to give their proxies to the directors present at the meeting with the vote to be shared with each director receiving an equal percentage, this disregards the fact that directors individually may vote differently from the board as a whole and owners may not be willing to choose that option.

While proponents of this bill may try to downplay the argument about the lack of a quorum by arguing that people who don't know to whom to give their proxies can simply check the quorum only box, this position ignores the fact that quorum only proxies cannot be voted on issues that arise at a meeting or for the election of directors. A large number of "quorum only" proxies will make it difficult to achieve the requisite percentage vote on a number of issues that could arise at an association meeting including, in many instances, the adoption of a standard annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

It is simply unreasonable to make it more difficult for associations to conduct business because a minority group of owners are unhappy with their boards when the fact is that a great number of condominium owners are happy with their boards as evidenced each year by the fact that they give their proxies to the board.

Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Julie Wassel

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

I OPPOSE S.B. 2404, SD1 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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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Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

If this bill is adopted, many owners who would otherwise give their proxies to their boards may decide not to return a proxy when they don’t see the “board as a whole” box because they don’t trust anyone else enough to name them as their proxy. If this happens, associations will have a difficult time achieving a quorum because proxies given to the board as a whole generally make

up a significant part of the quorum. While the proponents may argue that owners are still free to give their proxies to the directors present at the meeting with the vote to be shared with each director receiving an equal percentage, this disregards the fact that directors individually may vote differently from the board as a whole and owners may not be willing to choose that option.

While proponents of this bill may try to downplay the argument about the lack of a quorum by arguing that people who don't know to whom to give their proxies can simply check the quorum only box, this position ignores the fact that quorum only proxies cannot be voted on issues that arise at a meeting or for the election of directors. A large number of "quorum only" proxies will make it difficult to achieve the requisite percentage vote on a number of issues that could arise at an association meeting including, in many instances, the adoption of a standard annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

It is simply unreasonable to make it more difficult for associations to conduct business because a minority group of owners are unhappy with their boards when the fact is that a great number of condominium owners are happy with their boards as evidenced each year by the fact that they give their proxies to the board.

Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Pamela J. Schell

SB-2404-SD-1

Submitted on: 3/11/2024 12:40:01 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Rick McCormick	Individual	Oppose	Written Testimony Only

Comments:

Why are you taking away the vote of a property owner to entrust thier board to make decisions for them? Many people live off island, or are navigating the extensive building process and they trust thier board to make sound decisions for them. I oppose legislation the hampers the prioces of the boards getting business done.

SB-2404-SD-1

Submitted on: 3/11/2024 1:54:25 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Judith A Scheu	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE S.B. 2404, SD1 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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. This has been the preferred choice of many condominium owners for 40 years. Without good cause or justification, this bill will eliminate the requirement that proxies contain a box allowing owners to give their proxies to the board as a whole.

The proponents of eliminating the “board as a whole box” on proxies have argued that the box gives too much power to condominium boards. However, they completely ignore and disregard the fact that owners who check the box do so because they trust their boards and want their boards to have the power to cast their vote. Owners are free to check any of the boxes on the proxy. The “board as a whole box” is merely one of several options. The Legislature should not interfere with the right of owners to give their proxies to whom they please simply because a small group of owners are unhappy with their boards.

Furthermore, the 30-word sentence, “To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting,” is critically important and has been fine-tuned over the years. It clarifies that when an owner gives a proxy to the board, this means the “board as a whole” (as opposed to individual directors). It also clarifies how the board vote is to be decided, i.e., as determined “on the basis of the preference of a majority of the directors present at the meeting.” Without the required 30-word sentence pre-

printed on proxies, owners who would normally check the “board as a whole” box on a proxy may write in “to the Board,” or some variation of that on the blank line on a standard proxy form. If this happens, disputes may arise over how a board is to cast the proxy vote because the proxy no longer contains the clarifying language. Therefore, not requiring the 30-word sentence may lead to disputes and possible litigation.

1. this bill is adopted, many owners who would otherwise give their proxies to their boards may decide not to return a proxy when they don’t see the “board as a whole” box because they don’t trust anyone else enough to name them as their proxy. If this happens, associations will have a difficult time achieving a quorum because proxies given to the board as a whole generally make up a significant part of the quorum. While the proponents may argue that owners are still free to give their proxies to the directors present at the meeting with the vote to be shared with each director receiving an equal percentage, this disregards the fact that directors individually may vote differently from the board as a whole and owners may not be willing to choose that option.
2. proponents of this bill may try to downplay the argument about the lack of a quorum by arguing that people who don’t know to whom to give their proxies can simply check the quorum only box, this position ignores the fact that quorum only proxies cannot be voted on issues that arise at a meeting or for the election of directors. A large number of “quorum only” proxies will make it difficult to achieve the requisite percentage vote on a number of issues that could arise at an association meeting including, in many instances, the adoption of a standard annual resolution on assessments which is needed by many associations to avoid paying taxes on excess income at the end of the year.

It is simply unreasonable to make it more difficult for associations to conduct business because a minority group of owners are unhappy with their boards when the fact is that a great number of condominium owners are happy with their boards as evidenced each year by the fact that they give their proxies to the board.

Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Judith A Scheu.

LATE

SB-2404-SD-1

Submitted on: 3/11/2024 3:02:09 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Brett Kulbis	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE.

In my over 10-year experience being on my local HOA Board, removing this option from the proxy form will severely hinder HOA Boards because too often Owners do not want or can't attend their Annual Meetings.

Most proxies are used for establishing quorum at annual meetings for the election of board members and to conduct business requiring owner approval. They have three options for the owner:

"The undersigned, being the owner(s) of the unit(s) shown below, does hereby constitute and appoint:

1. *The Board as a whole, to be voted on the basis of the preference of a majority of the Directors present at the meeting.*
2. *The Directors present at the meeting and the vote to be shared with each Director receiving an equal percentage.*
3. *The Individual whose name is printed on the line next to this box."*

LATE

SB-2404-SD-1

Submitted on: 3/11/2024 5:30:14 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

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

Comments:

Dear Senator McKelvey, Chair, Senator Gabbard, Vice Chair, and Members of the Committee:

I OPPOSE H.B. 2524 H.D. 1 for the reasons set forth below.

Under Hawaii Revised Statutes (“HRS”) Sections 514B-65 and 514B-66, the Real Estate Commission of the State of Hawaii has the authority to investigate violations of specific sections of the Condominium Property Act, issue complaints, conduct hearings, render findings of facts and if necessary, issue cease and desist orders, in accordance with the detailed procedures set forth in those sections.

H.B. 2524 H.D. 1 adds vague and ambiguous language to HRS Section 467-4 that would compel the commission to “[r]eceive and investigate complaints by condominium unit owners against associations that are subject to chapter 514B . . .” The measure fails to specify:

1. The types of complaints that would be subject to investigation by the commission;
2. The procedures for conducting the investigations;
3. The steps that the commission may take if it finds evidence of violations;
4. The power of the commission to conduct hearings;
5. The power of the commission to issue cease and desist orders or grant other relief.

Furthermore, H.B. 2524 H.D. 1 is unnecessary given the broad investigative powers of the commission under HRS Sections 514B-65 and 514B-66. In that regard, H.B. 2524 H.D. 1 will create confusion as it significantly overlaps with HRS Sections 514B-65 and 514B-66. If the measure is adopted, the commission could have a duty to conduct investigations under both HRS Section 467-4 and Section 514B-65; however, the procedures will be different under the two sections and actions taken by the commission under HRS Section 467-4 will be subject to challenge given the vague and ambiguous language in that section. The Legislature should not impose additional duties on the commission absent a demonstrated need to do so. Additionally, the Legislature should not adopt laws that are vague and ambiguous.

For these reasons, I urge the Committee to defer H.B. 2524 H.D. 1.

Respectfully submitted,

Primrose K. Leong-Nakamoto

LATE

SB-2404-SD-1

Submitted on: 3/11/2024 5:41:13 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kathleen T Kaiser	Individual	Oppose	Written Testimony Only

Comments:

Voting by proxy is giving consent for the board of directors as a whole not only can make it possible for associations to get a quorum and continue to conduct business. It is a conscientious and intentional decision that the home owner will trust the board to make decisions it their behalf.

My experience as a condo owner who has served on our association board off and on for the past 20years I know that is could be the only time some owners activitely participate in their the governing body of their condo community. Keeping the option in protections the owners who are the most likely won't attend and know how their undirected proxy is being used..

Mahalo,

Kathleen Kaiser, condo owner of The Royal Palm of Waipio

LATE

SB-2404-SD-1

Submitted on: 3/11/2024 7:33:56 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
LP Bailey	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill as it limits the property owner's options in choosing representation at condominium association meetings.

SB-2404-SD-1

Submitted on: 3/11/2024 9:34:47 PM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Stephen DiRico	Individual	Oppose	Written Testimony Only

LATE

Comments:

I oppose SB2404

LATE

SB-2404-SD-1

Submitted on: 3/12/2024 11:19:27 AM

Testimony for CPC on 3/12/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Clarke Farden	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE S.B. 2404, SD1 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,” because their faith and confidence is in the board. For those owners who do not have confidence in their association’s board of directors or prefer to give their proxies to someone else, 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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Please do the right thing and protect the rights of condominium owners, many of whom are your constituents, by deferring this bill.

For the reasons stated herein I OPPOSE S.B. 2404, SD1 and urge the committee to defer it.

Respectfully submitted,

Clarke Farden