



555 University Avenue Honolulu, Hawaii 96826

March 18, 2021

To: Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Testimony in **Opposition** to HB 221.

Chair Baker, Vice Chair Chang and members of the committee. My name is Malcolm Barcarse, Jr. and I am the President of the Association of Apartment Owners for the Ala Wai Plaza Skyrise. Our building has 206 units, with just under half of our owners being owner occupants.

We are opposed to this bill because as it would make holding an annual meeting virtually impossible for a building such as ours. Our managing agent with the assistance of our site manager is tasked to distribute and remind owners to submit their proxies for annual meetings. The proxies are used primarily to achieve quorum. If our managing agent is not allowed to distribute proxies that would require that a majority of our owners would have to be physically present in order for us to conduct an annual meeting. In a building like ours where half of our owners are not owner occupants that would be an almost impossible task. Therefore, the business of our association would not get done and our board would automatically roll over to the next year, which achieves one of the things that I believe the proponents of this bill want to stop.

We understand that there are associations where boards take advantage of the proxy procedures and there are various ways in which that can be reformed which gets proposed at the legislature every year. Our association takes no position on those matters. However, our interest is to ensure that our association can continue to orderly conduct annual meetings and elect voluntary board members to continue to do the important work of the association. Therefore we ask that this bill be HELD.

Thank you for the opportunity to testify.



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

March 15, 2021

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Stanley Chang, Vice-Chair
Senate Committee on Commerce and Consumer Protection (CPN)
Hawaii State Capitol, Room 230
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in OPPOSITION to HB221 HD1; Hearing Date: March 18, 2021 at 10:00 a.m. in Senate conference room 229/videoconference; sent via Internet

Aloha Chair Baker, Vice-Chair Chang, and Committee members,

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

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

I am the chair of the HSAP Legislative Committee. I’m also an experienced Professional Registered Parliamentarian who has worked with condominium and community associations every year since I began my parliamentary practice in 1983 (more than 1,800 meetings in 38 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2004.

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

This testimony is presented in OPPOSITION to HB221 HD1.

Summary of Bill:

The current proxy statute prohibits the solicitation by:

- the managing agent,
- the resident manager, and
- their employees

for **“use by the managing agent or resident manager.”**

The Bill briefly proposes to expand the proxy statute for condominiums by including the association's employees and eliminating all solicitation of proxies **for use by anybody.**

Our position:

The Bill, if enacted into law, will lead to further proxy disputes. The standard distribution of proxies by a managing agent (and in tough cases, a resident manager) with a request to send them in for a quorum can be construed as soliciting and thereby prohibited.

Even the use of a third party mailing service could be challenged as a way to get around this proposed prohibition.

The unintended consequence will be either (a) increased challenges to any proxies solicited by management for any reason or (b) meetings with an insufficient ownership representation to conduct business.

This past year has resulted in numerous meetings which were cancelled or had no quorum due to COVID-19 issues. This has stopped owners from electing their board representatives. The bill will make it even more difficult for many associations to conduct their business.

The bill creates a problem where there is no demonstrated compelling issue to be resolved.

This bill is not in the best interests of condominium associations or their members. We oppose this bill.

We ask that the Committee defer or hold this bill.

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

Sincerely,

Steve Glanstein

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

HB-221-HD-1

Submitted on: 3/14/2021 1:59:02 PM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---|---------------------------|---------------------------|
| Jane Sugimura | Testifying for Hawaii Council for Assoc. of Apt. Owners | Oppose | No |

Comments:

HCCA joins in the testimony of Laree McGuire of Porter McGuire Kiakona request that the Committee defer action at this time for the reasons in her testimony.

HB-221-HD-1

Submitted on: 3/13/2021 11:11:56 AM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|------------------------|---------------------------|---------------------------|
| Richard Emery | Testifying for Associa | Oppose | No |

Comments:

This Bill has unintended serious consequences. The words crossed out relating to "their own use" should be reinserted. As written a Managing Agent could not solicit proxies on behalf of the association to obtain a quorum for example. The use of the words "for any purpose" is problematic.

HB-221-HD-1

Submitted on: 3/15/2021 9:45:37 AM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|------------------------------------|---------------------------|---------------------------|
| Resident Manager | Testifying for Honolulu Tower AOAO | Oppose | No |

Comments:

Honolulu Tower is a 396 unit condominium, built in 1982, located at Beretania and Maunakea Streets. The Board of Directors of the Honolulu Tower Association of Apartment Owners met on February 1, 2021 at which time it voted unanimously to oppose this bill.

Currently, the law prohibits managing agents and resident managers from soliciting proxies for their own use. It appears that the proposed amendment on page 1, lines 3-7, would prohibit them from sending the proxy mailing to owners. If that interpretation is correct, who is expected to prepare the packet and send the proxies to the owners? This is part of the responsibility of the property manager or resident manager, it is part of what they are paid to do.

We respectfully ask you to defer this bill.

Board of Directors

Honolulu Tower AOAO

HB-221-HD-1

Submitted on: 3/15/2021 9:46:52 AM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|------------------------------------|---------------------------|---------------------------|
| Atlanta Dove | Testifying for Honolulu Tower AOAO | Oppose | No |

Comments:

Honolulu Tower is a 396 unit condominium, built in 1982, located at Beretania and Maunakea Streets. The Board of Directors of the Honolulu Tower Association of Apartment Owners met on February 1, 2021 at which time it voted unanimously to oppose this bill.

Currently, the law prohibits managing agents and resident managers from soliciting proxies for their own use. It appears that the proposed amendment on page 1, lines 3-7, would prohibit them from sending the proxy mailing to owners. If that interpretation is correct, who is expected to prepare the packet and send the proxies to the owners? This is part of the responsibility of the property manager or resident manager, it is part of what they are paid to do.

We respectfully ask you to defer this bill.

Board of Directors

Honolulu Tower AOAO

HB-221-HD-1

Submitted on: 3/15/2021 11:23:24 AM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|-------------------------------|---------------------------|---------------------------|
| Neil Ross | Testifying for Associa Hawaii | Oppose | No |

Comments:

Dear Committee Chair and Members.

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

As currently drafted, the proposed change to 514B-123(j), would severely impact the ability of Associations to reach quorum to hold their Association meetings. This would have a detrimental impact on the operation of Associations, and would affect owners negatively. Without quorum, action cannot be taken (including the election of Directors) and important decisions for the improvement or upkeep of a condominium may therefore need to be deferred or delayed. This could add extra expense to the owners.

As drafted, the change to the statute would put Managing Agents in a position where we could not work on behalf of our Association clients to help ensure enough proxies are received to hold a meeting. Please note that we are not soliciting proxies for our use, that is already prohibited in the statute, we are collecting them on behalf of the owners to select anyone they chose to represent them. Our role is strictly administrative.

I respectfully ask that you defer this bill.

Mahalo,

Neil Ross

SVP Operations

Associa Hawaii



March 15, 2021
Chair Rosalyn H. Baker
Vice Chair Stanley Chang
Committee on Commerce and Consumer Protection

HB 221 HD1: Oppose

The bill, as currently proposed in HD1, would effectively eliminate the capability of nearly all of the condominium associations in Hawaii to hold an annual election for their Boards of Directors. Most of the condominiums in Hawaii employ a professional firm in the capacity of managing agent. Every year the managing agents prepare a standard proxy form and send it to all the owners in preparation for the Association's annual meeting. The managing agent instructs all the owners to fill out the proxy in one of the four methods designated in HRS 514B-123(e), and to return that completed proxy to the managing agent, or to the Association Secretary, for the purpose of establishing a quorum to conduct business at the annual meeting.

HRS 514B-123 is very explicit in defining how this procedure is to be conducted, including the form and content of the proxy, the time frames for mailing and collection relative to the date of the annual meeting, who is allowed to view the returned proxies prior to the annual meeting, and what criteria are to be used in determination of validity of the completed proxies.

That is the procedure that HB 221 HD1 would prohibit. Very few condominium associations employ the staff sufficiently capable of completing the mailing of the proxies or compiling the results when they are returned. Even if the condominiums did employ sufficient staff to complete this annual task, HB 221 HD1 would prevent them from doing so. Who, then, is going to do it?

Since the majority of owners do not attend the annual meetings in person, the associations depend on the proxy submissions to establish a quorum to conduct business and hold their annual elections. In essence then, if HB 221 HD1 becomes law, the condominium associations would no longer be able to conduct their annual meetings.

If there is some other intent driving this bill, then it needs to be identified and clearly defined. If the word "solicitation" is intended to include the process of mailing proxy forms and having them returned to the managing agent, then that process should be specifically stated in the bill and some other method of distributing and collecting the proxies should be suggested.

At the very least, the term "solicitation" should be very explicitly defined so that there is no ambiguity in the intent of the bill or the process it addresses.

Very truly yours,

Allen Wilson
Allen Wilson

HB-221-HD-1

Submitted on: 3/16/2021 9:22:08 AM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| Mark McKellar | Testifying for Law Offices of Mark K. McKellar, LLLC | Oppose | No |

Comments:

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

I oppose H.B. 221 H.D.1.

The change to HRS Section 514B-123(j) may lead to disputes over whether simply mailing a meeting packet that contains a proxy is the same as "soliciting" proxies. The statute already prohibits managing agents from soliciting proxies for their own use, so there is no need for the change. If the bill is adopted, associations may find it necessary to hire outside mailing services to mail their annual and special meeting packets which could be costly and burdensome.

This bill is not in the best interests of condominium associations or their members. There is no good or compelling reason to make the proposed change.

I urge the committee to defer action on H.B. 221 H.D.1. Thank you.

Sincerely,

Mark McKellar

HB-221-HD-1

Submitted on: 3/15/2021 3:09:24 PM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| Roger E. Wehrsig | Testifying for Waikoloa Village Associatin | Oppose | No |

Comments:

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

While the Waikoloa Village Association does not fall under the provisions of 514B-123 and falls under 421J as a Planned Community Association, we oppose H.B. 221 H.D.1. as we do not desire to have such a provision later included under 421J.

The change to HRS Section 514B-123(j) may lead to disputes over whether simply mailing a meeting packet that contains a proxy is the same as "soliciting" proxies. The statute already prohibits managing agents from soliciting proxies for their own use, so there is no need for the change. If the bill is adopted, associations may find it necessary to hire outside mailing services to mail their annual and special meeting packets which could be costly and burdensome.

This bill is not in the best interests of condominium associations or their members. There is no good or compelling reason to make the proposed change.

I urge the committee to defer action on H.B. 221 H.D.1. Thank you.

On behalf of the Board of Directors for

Waikoloa Village Association

Roger E. Wehrsig

General Manager

HB-221-HD-1

Submitted on: 3/16/2021 3:39:41 PM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| Dante Carpenter | Testifying for Country Club Village, Phase 2 (469 Units) | Oppose | No |

Comments:

Chair Baker, V. C. Chang, and Committee Members:

I oppose H.B. 221 HD1. The change to HRS Section 514B-123(j) may lead to disputes over whether simply mailing a meeting packet that contains a proxy is the same as "soliciting" proxies. The statute already prohibits managing agents from soliciting proxies for their own use, so there is no need for the change. If the bill is adopted, associations may find it necessary to hire outside mailing services to mail their annual and special meeting packets which could be costly and burdensome, as well.

This bill is not in the best interests of condominium associations or their members! There is no good or compelling reason to make the proposed change.

I urge the committee to defer indefinitely any action on H.B. 221, HD1. Thank You.

Respectfully,

Dante Carpenter,

Vice President CCV2

(Member, Board of Directors, CCV2, for over 25 years.)

HB-221-HD-1

Submitted on: 3/17/2021 11:05:59 AM

Testimony for CPN on 3/18/2021 10:00:00 AM



| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------------------|--------------------|--------------------|
| Dirk Koeppenkastrop | Testifying for IL Gelato Hawaii | Oppose | No |

Comments:

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

1. oppose H.B. 221 H.D.1.

1. change to HRS Section 514B-123(j) may lead to disputes over whether simply mailing a meeting packet that contains a proxy is the same as “soliciting” proxies. The statute already prohibits managing agents from soliciting proxies for their own use, so there is no need for the change. If the bill is adopted, associations may find it necessary to hire outside mailing services to mail their annual and special meeting packets which could be costly and burdensome.

This bill is not in the best interests of condominium associations or their members. There is no good or compelling reason to make the proposed change.

I urge the committee to defer action on H.B. 221 H.D.1. Thank you.

Sincerely,

Dirk Koeppenkastrop

House of Representatives

Committee on Consumer Protection and Commerce
Thursday, March 18, 2021 at 10:00 a.m.

To: Chair Aaron Ling Johanson and Vice-Chair Lisa Kitagawa

Re: HB221 HD1, relating to Condominiums

Aloha Chair Johanson, Vice-Chair Kitagawa, and members of the House Committee on Consumer Protection and Commerce,

I am Lila Mower, leader of Hui 'Oia'i'o, the Condo Owners Coalition of Hawaii, and I **STRONGLY SUPPORT HB221 HD1** but urge your committee to amend the current version of the measure to add back the original verbiage in HB221 which would delete the proxy assignment option "to the Board as a whole" which serves no other purpose then to amplify the voting power of the majority of the Board to re-elect themselves.

When "the Board as a whole" is an option and directors are elected by use of that option, those directors' constituency is the Board itself and not the owner-members of the association. Their actions often reflect their allegiance and service to themselves before their duty to their association. With little regard for owners who did not elect them, many of these Directors often rule these associations for years, even decades.

In 2018, I was elected to the Board of my association of 324 units' owners. By percentage of common interest (pci), 63.278% of owners participated in the annual meeting and election which included the 53.616% who assigned their proxies to one of three options:

- (1) to the Board as a whole,
- (2) to those directors present at the meeting with the vote to be shared with each director receiving an equal percentage, or
- (3) to their own designated specific, named individual.

Just under 10 pci of owners assigned their proxies "for quorum purposes only" and chose not to vote.

Three of nine directors' seats were open. Through "cumulative voting," each owner's pci could be used to vote three times (the number of open seats available). Thus, owners represented by a total of 53.616 pci voted in the election and the maximum cumulative vote count is:

$$53.616 \text{ pci} \times 3 \text{ open seat} = 160.848$$

Candidates AA and BB were incumbent Board members holding executive positions on the Board and were up for re-election. A director who decided not to run again for his open seat revealed--after the election--that Candidates AA and BB were notified in advance of the election (probably by the managing agent who was facilitating the election because no other had this knowledge) of the large number of proxies assigned to me from which it can be inferred that I was a formidable popular candidate, causing them to decide in advance of the election that they would split all the votes assigned by proxy to "the Board as a whole" between themselves.

These are the final vote tallies on election night:

| | |
|---------------------------|--------|
| Candidate BB | 48.614 |
| Lila Mower | 48.533 |
| Candidate AA | 44.427 |
| Candidate C | 4.184 |
| Candidate D | 2.218 |
| Candidate E | 1.580 |
| Voided or unvoted ballots | 11.292 |

None of the other candidates, including myself, were incumbents and none of us received votes assigned by proxy to the Board. All our votes came from owners, whether by proxy or in person.

Incumbent Candidates AA and BB each only earned the support of a handful of owners in addition to themselves (Candidate BB owned a large commercial unit with a larger pci than Candidate AA), possibly a reflection of owners' less-than-positive opinions of the incumbent Board.

However, through votes gathered by proxies assigned to "the Board as a whole," a selection often recommended by an association's management, staff, and employees to naïve owners, the incumbents successfully re-elected themselves and continue to dominate the Board's actions and control the operations, expenses, and assets of the Association.

On the Board of nine directors, I became the only director who was elected without any votes from the Board.

In each successive year since then, owners who vote on their own or assign their proxies to other owners have been able to elect only one director (out of three available seats) with their votes. We three are in the minority and therefore unable to protect the rights and interests of our neighbors and fellow owners against the interests of the Board's majority.

A neighboring condo association, also with nine directors on their Board, allegedly took eleven (11) years for those who are elected by owners--and not by the Board--to gain the majority of the Board, allowing them to finally enact long-delayed maintenance and necessary capital improvements.

Eliminating the proxy assignment option "to the Board as a whole" is opposed by those who claim that this will adversely affect an owner's right to choose, however that option disenfranchises owners by creating a nearly insurmountable barrier to a fair election. Their argument is specious and is contrary to their touted claim of "an owner's right to choose."

Condominiums are governed by State statutes enacted by Legislators. Thus, if Hawaii is truly a democracy, then Legislators are responsible to ensure that owners have competitive but fair elections of directors who are representative of owners, and not the self-appointed, self-anointed Board.

Please amend this measure by adding back the original verbiage which eliminates the proxy option, "to the Board as a whole."

Mahalo.

HB-221-HD-1

Submitted on: 3/12/2021 4:18:20 PM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Philip Nerney | Individual | Oppose | No |

Comments:

HB 221 HD1 should be deferred because it is the *function* of property management to "solicit" proxies. That is, property managers do the administrative work relating to condominium meetings and so they necessarily distribute the meeting notice and the authorized "standard proxy form" and, in turn, receive and process proxies.

Per HRS Section 514B-123(d), proxies must be returned to the "secretary of the association or the managing agent". In practice, proxies are returned to the managing agent.

If HB 221 HD1 were to pass, there would be no administrator to send out and receive proxies. It is the managing agent that maintains owner lists and handles administrative tasks.

Under current law, a managing agent cannot solicit proxies "for use by the managing agent or resident manager," HRS Section 514B-123, which addresses the legitimate concern.

HB-221-HD-1

Submitted on: 3/12/2021 4:42:26 PM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| R Laree McGuire | Individual | Oppose | No |

Comments:

Aloha,

I respectfully submit that HB 221 should be deferred as the current law--HRS 514B-123 is sufficient, as drafted, with regard to managing agents. Note, managing agents are tasked with the responsibility of soliciting proxies. They do the administrative work regarding condominium meetings and as such, they are required to distribute the meeting notice and the authorized standard proxy form and they are also tasked with receiving and processing the proxies. Under HRS 514B-123(d), proxies must be returned to the "secretary of the association or the managing agent." More often than not, they are returned to the managing agent. If HB 221 were to pass, associations would then be required to hire administrators to send out and receive these proxies at an extra cost. The Bill should be deferred.

Mahalo for your consideration.

HB-221-HD-1

Submitted on: 3/12/2021 8:58:05 PM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------|--------------|--------------------|--------------------|
| lynne matusow | Individual | Oppose | No |

Comments:

Please accept this as testimony in strong opposiiton to this bill. I am a condo owner, resident, and board member. You are trying to fix a non-existent problem. This system has existed for years and works.

Very troubling is the language that would forbid managing agents, resident managers, or their employees from soliiciting proxies. Current language makes it clear that they cannot solicit for their own use. With the proposed change it implies that the proxy mailings, etc. cannot even be prepared or sent to owners by the managing agent. If that is the case, who will be charged with this duty? The Board doesn't have the power. This is the duty of the managing agent or in self governed properties the staff. Was this thought through? Does the introducer understand how the process works? Maybe the legislature would like to do the work.

The initial proxy solicitation is part of a mailing prepared by the management company, which also includes notice of the meeting and an agenda. Completed proxies can be mailed, emailed, or faxed to the managing agent who keeps track of which owners have responded and which have not. If quorum is not in sight, additional attempts are made to get the proxy forms returned. In addition, many properties allow the office staff to forward completed proxies to the managing agent. Often senior citizens with no techical knowledge, no smart phones, no computer take advantage of this option. If they show up at the office with a completed proxy and ask staff to send it on, is that solicitation. Often the same staff slips reminders under the doors to those who have not responded. Is that solicitation?

In testimony submitted to the House, Steve Glanstein, Professional Registered Parliamentarian, Chair of the HSAP Legislative Committee wrote, "

Absolute Prohibition on Solicitation (Page 1, lines 3-7 in HD1)

Current Status:

The existing statute, HRS §514B-123(j) prohibits proxy solicitation by a:

1. (a) managing agent,
2. (b) resident manager,

3. (c) or their employees

for use by the association that retains the managing agent or resident manager. It also prohibits the managing agent or resident manager from casting any proxy vote at any association meeting except for the purpose of establishing a quorum.

The proposed change is to prohibit proxy solicitation by a: (a) managing agent, (b) resident manager, (c) or their employees, or (d) the association's employees

for use by the association. It retains the prohibition of the managing agent or resident manager from casting any proxy vote at any association meeting except for the purpose of establishing a quorum.

This proposed change to strike out the clause "that retains the managing agent or employs the resident manager" (Page 2, lines 16-17) would prohibit all individuals and entities in these categories from soliciting any proxies from any unit owners.

Proxy distribution is commonly done by managing agents throughout the state in the form of a notice of meeting and proxy sent to all owners. Notices usually request owners to send in their proxies. This is solicitation. The bill would create uncertainty whether a managing agent could even distribute proxies.

The solicitation is not for the managing agent or the resident manager; it is for the owner to select anybody they wish who will be present at the meeting in order to conduct legitimate business.

When an association doesn't have enough proxies for a quorum, it is common for management to solicit more proxies, regardless of who is named as a proxyholder."

Please defer this bill. If not, there won't be any annual meetings as notices will not be sent as no one will be authorized to do so.

Lynne Matusow

Chair Baker and members of the committee

My name is John Morris and I am testifying against HB 221, HD 1. I'm not sure of the complaint that gave rise to this bill but it seems to seriously misunderstand the problems most facing associations.

Moreover, many of the proxies sent in are often quorum only proxies which means they cannot be used to actively vote for any proposition that comes before the meeting. For example, if an association needs a majority of all the owners to approve something, only 55% of the owners bother to respond by sending in proxies, and 10% of those proxies are quorum only, the association will not be able to have a majority of the owners to approve the issue because it will only have 45% voting proxies.

Regardless, HB 221 fails to understand that a large percentage of associations do not have proxy fights or contests for proxies. Instead, most associations have trouble even making quorum for the annual meetings, because many owners are too apathetic to send in a proxy to allow annual meetings to go forward. After scrabbling around contacting owners to get the owners to send in proxies, many associations limp through their annual meetings with a 55% or, or at best 60% participation rate. SB 221 will now make that extremely difficult or impossible to do because there will be no one to solicit proxies on behalf of the association to allow the annual meeting to go forward.

If SB 221 becomes law, when it becomes apparent to an association that they are not going to have sufficient participation to hold the annual meeting, SB 221 will prevent the managing agent, resident manager, or any other association employee from contacting owners to ask them to send in a proxy. The current law says that any of those parties can contact owners to ask them to send in a proxy as long as those persons are not soliciting for themselves. SB 221 proposes to delete the that the exemption.

This, in turn, means that when it becomes apparent that there will be insufficient proxies, all of the paid representatives of the association will not be able to take any action to solicit proxies. Leaving this to volunteer board members imposes an unfair burden on those board members. **Moreover, if there is any kind of a proxy contest, the owners seeking proxy will probably argue that the board is gaining an unfair advantage because it is using association resources to solicit proxies.**

If the committee believes there truly is a problem, it should probably simply amend the current law to state:

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

This will prevent any paid association representative from soliciting proxies for themselves or the board or board members while still allowing them to solicit proxies to establish a quorum.

Thank you for this opportunity to testify.

John Morris

HB-221-HD-1

Submitted on: 3/15/2021 10:45:23 AM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Lyutsiya Taylor | Individual | Oppose | No |

Comments:

I oppose the bill. It is not clear. As a managing agent we process mailings of annual meeting packets with proxies to owners on behalf of the associations. Owners are expected to return their proxies to us so we can collect them, verify ownership, signatures and tally to make sure we have a quorum at meetings.

HB-221-HD-1

Submitted on: 3/15/2021 2:09:20 PM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Anne Anderson | Individual | Oppose | No |

Comments:

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

I oppose H.B. 221 H.D.1.

The change to HRS Section 514B-123(j) may lead to disputes over whether simply mailing a meeting packet that contains a proxy is the same as "soliciting" proxies. The statute already prohibits managing agents from soliciting proxies for their own use, so there is no need for the change. If the bill is adopted, associations may find it necessary to hire outside mailing services to mail their annual and special meeting packets which could be costly and burdensome.

This bill is not in the best interests of condominium associations or their members. There is no good or compelling reason to make the proposed change.

I urge the committee to defer action on H.B. 221 H.D.1. Thank you.

Sincerely,

M. Anne Anderson

HB-221-HD-1

Submitted on: 3/15/2021 3:36:23 PM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Cameo Fong | Individual | Oppose | No |

Comments:

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

I oppose H.B. 221 H.D.1.

A change to HRS Section 514B-123(j) may lead to disputes over whether simply mailing a meeting packet that contains a proxy is the same as "soliciting" proxies. Statute already prohibits managing agents from soliciting proxies for their own use, so there is no need for the change. If the bill is adopted, associations may find it necessary to hire outside mailing services to mail their annual and special meeting packets which could be costly and burdensome.

This bill is not in the best interests of condominium associations or their members. There is no good or compelling reason to make the proposed change.

I urge the committee to defer action on H.B. 221 H.D.1. Thank you.

Sincerely,

Cameo Fong

HB-221-HD-1

Submitted on: 3/15/2021 6:11:58 PM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Bob Toguchi | Individual | Oppose | No |

Comments:

This bill as written could potentially be read as restricting managing agents from mailing out annual meeting packets with proxies on behalf of the associations. As you know, if this was the case, it would create major challenges for achieving quorum, and potentially require Associations to appoint a third party to process association meeting mailings and packet distribution. All this would do is add expense to obtain quorum to conduct association business as required by law. Please redraft this house bill to be more clear in its intent to avoid such restriction.

HB-221-HD-1

Submitted on: 3/16/2021 9:39:48 AM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Lance S. Fujisaki | Individual | Oppose | No |

Comments:

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

I oppose H.B. 221 H.D.1. The change to HRS Section 514B-123(j) may lead to disputes over whether simply mailing a meeting packet that contains a proxy is the same as "soliciting" proxies. The statute already prohibits managing agents from soliciting proxies for their own use, so there is no need for the change. If the bill is adopted, associations may find it necessary to hire outside mailing services to mail their annual and special meeting packets which could be costly and burdensome.

This bill is not in the best interests of condominium associations or their members. There is no good or compelling reason to make the proposed change.

I urge the committee to defer action on H.B. 221 H.D.1. Thank you.

Sincerely,

Lance Fujisaki

HB-221-HD-1

Submitted on: 3/16/2021 10:13:59 AM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| mary freeman | Individual | Oppose | No |

Comments:

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

I oppose H.B. 221 H.D.1.

The change to HRS Section 514B-123(j) will cause disputes over whether mailing a meeting packet that contains a proxy is the same as "soliciting" proxies. The statute already prohibits managing agents from soliciting proxies for their own use, there is no need for the change. If the bill is adopted, associations may find it necessary to hire outside mailing services to mail their annual and special meeting packets which could be costly and burdensome to the homeowners..

This bill is not in the best interests of condominium associations or their members. There is no good or compelling reason to make the proposed change.

I urge the committee to defer action on H.B. 221 H.D.1. Thank you.

Sincerely,

Mary S. Freeman

Ewa Beach

HB-221-HD-1

Submitted on: 3/16/2021 11:44:28 AM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Suzanne Alawa | Individual | Oppose | No |

Comments:

Dear Chair Baker, Vice Chair Chang and Members of the Committee:

I oppose H.B.221 HD H.D.I.

The change to HRS Section 514B-123(j) may lead to disputes over whether simply mailing a meeting packet that contains a proxy is the same as "soliciting" proxies. The statute already prohibits managing agents from soliciting proxies for their own use, so there is no need for the change. If the bill is adopted, the associations may find it necessary to hire outside mailing services to mail their annual and special meeting packets, which could be costly and burdensome, unnecessarily.

This bill is not in the best interest of condominium associations or their members. There is no good compelling reason to make the proposed change.

I sincerely urge the committee to defer action on H.B. 221 H.D.I.

Thank you for your consideration

Suzanne Alawa

HOUSE OF REPRESENTATIVE
Committee on Commerce and Consumer Protection

To: Chair Aaron Ling Johanson and Vice-Chair Lisa Kitagawa

Date: Thursday, March 18, 2021

Time: 10:00 AM

Place: Conference Room 229 & Videoconference

Lourdes Scheibert
920 Ward Ave
Honolulu, Hawaii. 96814

RE: HB221-HD1

Aloha Chair Johanson, Vice-Chair Kitagawa, and members of the House Committee on Commerce and Consumer Protection: Henry JC Aquino, Sharon E. Har, Mark J Hashem, Satoru Kong, John M Mizuno, Dee Morikawa, Richard HK Onishi, David A Tarnas, Lauren Matsumoto.

I am Lourdes Scheibert and I strongly oppose HB221-HD1 amendment by dropping the language “deleting the option for condominium owner to give the proxy to the board as a whole”. HB221 should be kept as its original intent. This is why.

Proxies shared with each director present at the meeting allows owners to participate in Association matters in the event they are unable to be physically present. This proxy is all that is needed to ensure a quorum.

Although, your committee reports some condominium owners have raised concerns that proxies may be used by board members in an unscrupulous manner there is another side to condominium owners concerns over the control by certain board members and certain property managers who ignore written documents that ensure safety first. The knowledge of the project documents and building & fire safety codes are key in decision making for the community for safety and health. All too often this is ignored. The proxy as a whole given to the majority board members preference secure control of the community for many years and even decades without term limits.

My living example. My project documents, the Declaration and By-laws have a conflict in which the Declaration writes authorization by written consent of 75% of the owners then the DECLARATION prevails. All too often this is ignored by the majority board members. When a board secures the proxies as a whole the opportunity to cast that vote is controlled by the majority even though the Declaration states by written consent. Our past board members kept that language because they believed the owners should have full knowledge of alterations and additions to their property when changing the as-built plans. AND I know why.

An electric grill on wheels was placed near the edge of the swimming pool. It was gerry rigged to an electric outlet on the floor beneath. The announcement at the owners meeting, the grill is ready on first come first serve. Had I not intervene with electric and fire safety codes, we would be roasting wieners at the swimming pool deck today.

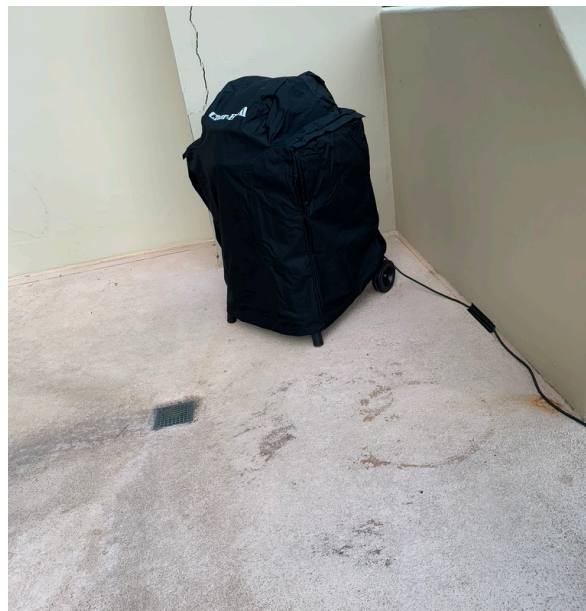
The jurisdiction on fire safety code is the Honolulu Fire Department shall review your plans and send a letter of authorization to move ahead. Approval shall be secured first.

Let's say the proxies as a whole given to the majority directors to vote their preference continues to elect themselves and other owners who will vote with them. Now the electric grill on wheels remain. Worst case scenario, there is an accident and some one dies. HFD investigation reveals there is no prior approval by the jurisdiction. Then the board can be brought up on criminal charges. And that's a fact. The owners who had no-say in voting is on the hook to pay for a lawsuit and a settlement of millions of dollars.

In 2019, House Leader Scott Saiki supported our bill HB347 was approved signed by Judiciary Committee Chris Lee. HB347 crossed over to the Senate Consumer Protection. We were hopeful but the bill was killed with no hearing scheduled. This is unfair to deprive us of the right to a fair hearing.

What will it take for the Legislature to hear us and understand that all condominium owners are not accusing any one of being unscrupulous but have the knowledge for health & safety for their own community. We know what's happening in our community. We don't keep returning to legislation because its fun. By the way to defer maintenance is to defer health and safety. A common practice used by veteran directors.

A picture is worth a thousand words meaning that complex and sometimes multiple ideas can be conveyed by a single still image. The question, is the Legislature Consumer Protection committee responsible should an accident occur because proxy as a whole to the



majority directors for their preference vote to keep the electric grill on wheels had I not intervene? And where was my management company who should have been the first to intervene? After all the common area and limited common area is a duty assigned to management.

Sincerely,
Lourdes Scheibert
Condominium Owner

HB-221-HD-1

Submitted on: 3/16/2021 12:41:19 PM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Jeff Sadino | Individual | Support | No |

Comments:

Chair Baker, Vice Chair Chang, and Members of the Committee,

I SUPPORT HB221 HD1.

I also believe that the previous Committee erred in removing the text relating to Voting as a Whole. I ask that your Committee re-insert the part of the Bill that bans voting as a whole. As I testified at the previous Committee, voting as a whole is an obvious strategy to make it easier for people who are in power to stay in power, it promotes crony-ism, and it absolutely does NOT get the most qualified people on the Board.

Voting as a whole takes what should be a level playing field and turns it into a very steep uphill battle for an Owner to get onto the Board who has criticized the Board in the past.

I also note that Hawai'i is the number one state in the country for lawsuits against Board Members. Obviously, Board governance needs reform.

Thank you for the opportunity to testify,

Jeff Sadino

HB-221-HD-1

Submitted on: 3/16/2021 2:35:16 PM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Zachary Plevel | Individual | Oppose | No |

Comments:

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

I oppose H.B. 221 H.D.1.

The change to HRS Section 514B-123(j) may lead to disputes over whether simply mailing a meeting packet that contains a proxy is the same as "soliciting" proxies. The statute already prohibits managing agents from soliciting proxies for their own use, so there is no need for the change. If the bill is adopted, associations may find it necessary to hire outside mailing services to mail their annual and special meeting packets which could be costly and burdensome.

This bill is not in the best interests of condominium associations or their members. There is no good or compelling reason to make the proposed change.

I urge the committee to defer action on H.B. 221 H.D.1. Thank you.

Sincerely,

Zachary Plevel

HB-221-HD-1

Submitted on: 3/17/2021 10:10:07 AM

Testimony for CPN on 3/18/2021 10:00:00 AM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Dale Arthur Head | Individual | Support | No |

Comments:

I testify in Support of this bill.

But, have to wonder why this Committee gutted the original version, which had been supported by this committee 2 years ago (2019) when it was HB347.

Dale Arthur Head (696-4589) helpmakahasurfide@gmail.com

LATE

TESTIMONY OF
LARRY S VERAY

TO THE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION RELATED TO
CONDOMINIUMS

**IN STRONG OPPOSITION OF HB221 HD1 WHICH CLARIFIES THAT NO MANAGEMENT
AGENT, RESIDENT MANAGER, OR THEIR EMPLOYEES, OR THE ASSOCIATION'S
EMPLOYEES, SHALL SOLICIT ANY PROXIES FROM ANY UNIT OWNER IN THE
CONDOMINIUM ASSOCIATION**

March 17, 2021

Aloha, Chair Rosalyn Baker, Vice Chair Stanley Chang and committee members. Thank you for allowing me the opportunity to provide testimony in strong OPPOSITION of HB221 HD1. Although I am Chair for the Pearl City Neighborhood Board No. 21, I am submitting this testimony as an individual; however, I am also Vice Chair of Waiiau Gardens Kai-B Association Board of Directors and the Board has authorized me to represent all the homeowners of our Association located in Pearl City. While the intent of this bill is good, it will cause more harm than good by preventing associations to facilitate their annual meetings, election of officers and conduct business without being able to meet quorum.

Our association of owners has a very successful process of our Property Manager mailing out proxies to all the association owners and scheduling our annual meetings. We must have the capability to reach out to owners who did not mail in their proxies and be able to conduct face-to-face collection using our Resident Manager to collect the required number of proxies to meet quorum.

I most strongly urge you to not pass this bill because it will not achieve its intended purpose and will likely result in associations not being able to make quorum for their annual association owners meeting. For the foregoing reason, I respectfully ask and urge the committee to defer any action on the bill.

Very respectfully,

Larry S. Veray