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February 11, 2008

Sen. Russell S. Kokubun (Fax: 808-586-6659)
Chairman, Consumer Protection and Affordable Housing Committee
2nd Senatorial District
Hawaii State Capitol, Room 407
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony regarding SB 3175; sent via facsimile only

Dear Chair Kokubun, Vice-Chair Ige, and members of the committee,

I am an experienced Professional Registered Parliamentarian and am involved with more than 100 association meetings per year. I personally conduct about 75 of these meetings and have three assistants who assist with the other meetings.

It has been my custom for many years as an experienced parliamentarian to provide the community with the benefit of my experience with numerous condominium, cooperative, and planned community association meetings (about 1,100 in 25 years).

This testimony is presented strictly as an individual in that capacity and in support of technical corrections to HRS §514B, the state law affecting Hawaii's condominium associations.

SB3175, SECTION 2

1. This section proposed to add a new definition for approval as:

> ""Approval" means approval by a note or the written consent of the unit owners."

This may contain a typographical error but it is a substantial one. It removes any "voting requirement." Perhaps the drafter meant approval by a **vote or the written consent of the unit owners**.

The addition of a definition of "Approval" should be qualified. The entire HRS §514B provides for various forms of approval; the word appears in about 25 places. There are approvals by the owners, the commissioner, and the board.

I suggest that this wording be amended as follows:

> ""Approval" when referring to unit owners means the approval by a vote or the written consent of the unit owners."

2. This section proposed to add a new definition for managing agent as:

> ""Managing agent" means any person retained, as an independent contractor, for the purpose of assisting the board in managing the operation of the property."

This fails to include the time frame when a developer is in control of the association and is the actual board. Suggest the following:

> ""Managing agent" means any person retained, as an independent contractor, for the purpose of assisting the board, or the developer if there is no board, in managing the operation of the property."

SB3175, SECTION 3

This section proposes to add applicability of several sections of HRS §514B to pre-existing condominiums.

There is no question that Part VI of HRS §514B applies to most condominium associations. However, the other parts do not automatically apply.

HRS §514B-69 in Part V of HRS §514B provides for penalties for violating various statutes located in Part VI.

These statutes in Part VI are: §514B-103, §514B-132, §514B-134, §514B-149, §514B-152, and §514B-154.

I suggest that §514B-22 also include §514B-69 in the applicability list.

This will clarify that the **penalties for violating various statutes in Part VI also apply even though the penalties are listed in Part V**.

SB3175, SECTION 7

HRS §514B-106(b) states, in part:

> "(b) The board may not act on behalf of the association to amend the declaration or bylaws (sections 514B-32(a)(11) and 514B-108(b)(7)), to remove the condominium from the provisions of this chapter (section 514B-47), or to elect members of the board or determine the qualifications, powers and duties, or terms of office of board members (subsection (e)); provided that nothing in this subsection shall be construed to prohibit board members from voting proxies (section 514B-123) to elect members of the board; *and provided further that the board may fill vacancies in its membership to serve until the next annual or special association meeting*."
>
> (Emphasis added)

I suggest that the committee consider an amendment to clarify or remove the last phrase in HRS §514B-106(b).

This clause has already proved problematic for several association clients this past year. There have been different legal interpretations and the applicability needs to be clarified. In one case, the same law firm has had two different opinions about this statute.

The negative result of these different interpretations, has already lead to forum shopping by at least one condominium association and **promises to create a larger problem than the current statute anticipated**.

HRS §514B-108(b)(3) already imposes the obligation for associations to have a procedure **in their bylaws** for the filling of vacancies.

I suggest one of two simple solutions to HRS §514B-106(b). They are:

(1) Amend the last clause to state, "and provided further that **unless otherwise specified in the bylaws,** the board may fill vacancies in its membership to serve until the next annual or special association meeting **including the purpose to fill the vacancy**."

(Underline and bold used to designate additions)

-or-

(2) Strike out the last clause, "and provided further that the board may fill vacancies in its membership to serve until the next annual or special association meeting."

If struck out, associations will simply refer to their bylaws for the required rules for filling vacancies in the office of directors.

I prefer the second solution since I believe that:

(a) Associations need to be more responsible for their own declaration, bylaws, and self management.

(b) There are numerous other types of associations, e.g., resorts, condo-hotels, mixed use, townhouses, etc. and they may have bylaws peculiar to their different requirements.

(c) Several associations have amended their bylaws to ensure that there was no ambiguity regarding the filling of vacancies. The law already requires that the bylaws have wording regarding the filling of vacancies.

I request that there be some consideration to amending the existing bill in order to include one of the suggested amendments.

SB3175, SECTION 8

I must express my concern about section 8. It proposes to amend HRS §514B-122 by **relaxing the notification requirement of approved minutes** by the board and allowing distribution prior to the next association meeting.

This issue is different from the issue described in the previous section. The requirement for availability of minutes came about due to a history of disputes regarding availability of minutes even up to 1 day before the annual meeting.

The purpose of having minutes approved by the board is to make formally approved minutes available to the owners as soon as possible.

Association meeting minutes are different from minutes required by the Sunshine law. Association meeting minutes follow a Robert's Rules format and generally include only formal association actions.

There is no reason why these minutes can't be made absolutely available to owners within 60 days of the meeting date, regardless of whether they are approved.

I suggest the addition of an absolute requirement that the minutes be available within 60 days of the meeting.

I suggest the following wording for HRS §514B-122(a):

> "(a) Minutes of meetings of the association shall be approved at the next succeeding regular meeting or by the board, within sixty days after the meeting, if authorized by the owners at an annual meeting. **Notwithstanding any approval procedure, owners shall be entitled to have a copy of the minutes of an association meeting no later than 60 days after any association meeting.** [If approved by the board, owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval.]"
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> (Wording to be added underlined and highlighted, wording to be deleted bracketed.)

Should you wish to discuss further, your call is most welcome. My phone number is 423-6766. Thank you for the opportunity to present testimony on this subject.

Sincerely,

Steve Glanstein
Professional Registered Parliamentarian

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