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February 7, 2009

Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice-Chair
Consumer Protection and Commerce Committee
Hawai'i State Capitol, Room 325
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony regarding HB 137; Hearing Date: February 9, 2009; sent via facsimile to 586-6221; e-mail to: CPCtestimony@Capitol.hawaii.gov.

Dear Chair Herkes, Vice-Chair Wakai, and Members of the Committee:

I am an experienced Professional Registered Parliamentarian and have worked with over 120 condominium association meetings last year. I personally was parliamentarian or chair for 81 of these meetings and have three assistants who assist with the other meetings.

It has been my custom for many years to provide the community with the benefit of my experience with numerous condominium, cooperative, and planned community association meetings (about 1,200 in 25 years). This testimony is presented strictly as an individual in that capacity.

I oppose HB 137 and will address several of its sections below.

HB137, SECTION 1

This Section characterizes the amendments in the bill as "minor amendments." **These amendments are not minor.**

Some of these "minor amendments" will permit boards to delay publication of budgets (Section 7, item 1), allow recalled directors to be easily reelected (Section 7, item 2), and allow boards to withhold minutes of annual meetings for several months (Section 8).

Another amendment will redefine "Managing Agent," leading to numerous unintended consequences (Section 2).

HB137, SECTION 2

1. Item 1 proposes to add a definition of "Approval." It states,

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

This definition is, in my opinion, flawed, and creates ambiguity.

HRS §514B provides for various forms of approval; the word appears in about 16 places. **There are approvals by the owners, the commissioner, and the board.**¹

2. Item 2 proposes to amend both the definition of "managing agent" and "resident manager." It states, in part:

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

I am opposed to this proposed change.²

This proposed change will have several unintended consequences. §514B-132 currently provides that managing agents must be licensed real estate brokers or corporations authorized to do business under article 8 of chapter 412.

The overly broad definition of, "assisting the board" could be applied to gardeners, landscape architects, arborists, reserve specialists, etc. The unintended consequence will be an erroneous designation of various vendors as Managing Agents, thus requiring a broker's license.

The proposed change also fails to include the time frame when there is a managing agent and the developer controls the association prior to the election of a board of directors.

¹The wording should probably read as follows: "'Approval" when referring to unit owners means the approval by a vote or the written consent of the unit owners."

²This amendment is almost exactly the same amendment that was deferred in 2008 by the Senate Commerce and Consumer Protection Committee when it deferred SB3175.

HB137, SECTION 3

The proposed change to insert §514B-32 as a part of the list in HRS §514B-22 will have unintended consequences.

§514B-32 describes the required content of the Declaration that creates a condominium property regime. This change may result in automatically invalidating the declarations of all existing condominiums. This is inconsistent with the original recodification effort.³

HB137, SECTION 7

1. Item 1 proposes to amend HRS §514B-106(c):

~~"(c) [Within thirty days after the adoption] Prior to the effective date of any proposed budget for the condominium, the board shall [make available] send a copy of the budget to all the unit owners [and shall notify each unit owner that the unit owner may request a copy of the budget]."~~

I am opposed to this change. It actually provides for a delayed disclosure of the budget.

The existing statute requires that the budget be available within 30 days after adoption. A board could adopt a budget for the new year in September of the past year and hold up informing owners until December.

Owners should be entitled to have the budget available after adoption by the board, regardless of the budget's effective date.

The proposed change also ignores the added expense without any benefit to several condominium associations to send a copy of the budget to all owners, especially foreign owners.

I believe that the current statute requiring notification to all unit owners that they may request a copy of the budget is adequate. Currently, an association can already comply by making information available on an internet site (§514B-154).

2. Item 2 proposes to amend HRS §514B-106(f):

~~"(f) At any regular or special meeting of the association, any member of the board may be removed and successors shall be elected for the remainder of the term to fill the vacancies thus created. The removal [and replacement] shall be by a vote of~~

³This information is also contained in the presentation of the Real Estate Commission to the Senate Committee on Commerce, Consumer Protection, and Affordable Housing on February 12, 2008 on SB3175.
The web reference is: http://www.capitol.hawaii.gov/session2008/Testimony/SB3175_CPH_02-12-08.pdf

a majority of the unit owners and, otherwise, in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors and, if removal and replacement is to occur at a special meeting, section 514B-121(b)."

I am opposed to this change. This change is, in my opinion, the worst one of all of the changes. The current statute HRS §514B-106(f) has been very successful.⁴

I have collected statistics from four large property management companies regarding removal proceedings of one or more directors. These companies (Certified Management, Hawaiiana Management, Hawaii First, and Hawaiian Properties) manage approximately 1,200 of the about 1,628 condominium associations in the state of Hawaii.

The information received indicates only 6 planned community association removal proceedings and 19 condominium association removal proceedings in 2008.

The condominium association removal proceedings were less than 2% of all condominiums registered with the Real Estate Commission.

Either I or one of my three assistants were physically present at 15 of these 19 meetings. For your information, most of these 15 removal proceedings did not result in a removal of one or more directors.

The current law provides a threshold of a, "majority of unit owners" for both removal and subsequent replacement of directors.

This principle has worked in a majority of the removal cases.⁵

I am amenable to suggesting some changes to this section. However, the totality of these proposed changes and the detrimental effect to Hawaii's condominium associations force me to oppose this entire bill.

This majority of unit owners' threshold was designed to override several abuses in condominiums that I previously described in both verbal and written testimony presented in 2005.⁶

⁴This amendment is exactly the same amendment that was previously deferred in 2008 by the Senate Commerce and Consumer Protection Committee when it deferred SB3175.

⁵If requested, I can provide details for each of the removals that we attended last year.

⁶2005 Act 155, known as SB1798, HD1, CD1.

HB137, SECTION 8

This section proposes to amend §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. 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.~~] prior to the next association meeting."

I am opposed to this amendment. It will permit a board to withhold approved minutes until just prior to the next association meeting. That can be almost a year later.

The change also requires that a copy be given to all owners. Many owners look to the association website for minutes and my experience has been that most boards make the minutes available shortly after approval.

SUMMARY

The "minor amendments" have consequences that can undo much of the progress of the recodification effort. The major change in removal requirements would once again frustrate the removal procedures for condominium associations. I urge the committee to hold this bill.

Thank you for the opportunity to present testimony on this subject.

Sincerely,



Steve Gianstem
Professional Registered Parliamentarian

HAWAII COUNCIL OF ASSOCIATIONS
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LATE TESTIMONY

February 9, 2009

Rep. Robert Herkes, Chair
Rep. Glenn Wakai, Vice-Chair
House Committee on Consumer Protection & Commerce

RE: TESTIMONY IN OPPOSITION TO HB 137 RE CONDOMINIUMS
Hearing: Monday, February 9, 2009, 2:15 p.m., Conf. Rm. #325

Chair Herkes, Vice-Chair Wakai and Members of the Committee:

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

HCAAO opposes HB 137, which purports to clarify and improve implementation of various section of the HRS 514B. We disagree as follows.

The new proposed definition of "approval" is inappropriate since it would require unit owners to vote or consent in writing on many issues that HRS 514B currently requires the Board to approve. HRS 514B provides in its various sections, whether an issue is subject to unit owner approval or Board approval. All Declarations provide that the Board will manage and administer the condominium project and it can't do that if it had to get owner approval for every decision.

The additional language suggested for the definition of "resident manager" is redundant and unnecessary.

We do not understand the reason for the proposed deletion of the reference to 514B 140(c) in 514B-38 "Common Elements" at page 3 of the bill and reserve further comment on this suggestion.

We do not understand the reason for the proposed additional language in 514B-41 at page 6 of the bill. It appears that this new language would require unit owners to pay for the cost of maintenance, repair, replacement, addition and improvements for "any chute, flue, duct, wire, conduit, or any other fixture" that serves that unit and "any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but are located outside the unit's boundaries." However, there is existing language in 514B

that would allow the Declaration and the discretion of the Board to determine a fair allocation of costs, which would make this new language superfluous.

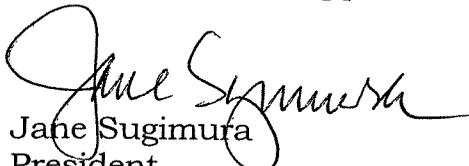
The proposed change in HRS 514B-106 at page 7 of the bill is unnecessary because currently most if not all Boards make the proposed budget available to owners prior to its effective date, which is the first day of January. Also, many boards already provide owners with copies. This proposed change was part of a previous bill, which was deferred after hearing.

The proposed change in 514B-122 at page 8 of the bill was also part of a previous bill, which was deferred after hearing.

The proposed change in 514B-153 at page 13 of the bill would make the providing of the names and addresses of vendees under an agreement of sale voluntary. Since the vendee under an agreement of sale can vote as an owner, the Association needs to know the name and address of that vendee for notice purposes.

For these reasons and because most of not all of these suggestions were deferred in previous bills, we ask that this bill also be deferred.

Thank you for the opportunity to testify.


Jane Sugimura
President