



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

February 16, 2010

Chair: Robert N. Herkes
Vice-Chair: Glenn Wakai
Committee on Consumer Protection & Commerce
Hawaii State Capitol, Room 316
415 South Beretania Street
Honolulu, HI 96813

RE: HB2624 HD1; Testimony in FAVOR WITH AMENDMENTS; Hearing Date: 2/18/2010; Sent via web and e-mail (CPCTestimony@Capitol.Hawaii.gov)

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

The Hawaii State Association of Parliamentarians ("HSAP") has been providing professional parliamentary expertise to Hawaii for more than 40 years. I am the chair of the Legislative Committee. I'm also an experienced Professional Registered Parliamentarian who has have worked with condominium and community associations every year since I began my practice in 1983 (over 1,200 in 26 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2006.

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.

The description of HB2624 states that its purpose is to conform planned community association laws with respect to proxies to comparable provisions regulating condominium property regimes. Unfortunately, the bill proposes to do much more.

HB2624 originally contained 2 sections that proposed to clarify Chapter 421J:

1. Section 1 updated the proxy requirements for planned community associations to be similar to those requirements for condominium associations (HRS §514B-123). This would have provide consistency with the condominium statute regarding solicitation of proxies, deadlines, and owner statements.
2. The effect of this equality would be to promote owner participation with their board with an expanded statement, increased from the older 100 words to one page.

3. Section 2 made a minor correction to the title, "Robert's Rules of Order Newly Revised" by removing the comma.

All of the testimony provided at the Housing committee hearing on this bill was in SUPPORT of HB2624 with no amendments proposed.

However, HB2624 was revised to include several changes, even though **no verbal nor written testimony was presented during the hearing to request or support these changes:**

1. Section 1 originally copied the proxy requirements in the condominium statute HRS §514B-123 to make the requirements consistent. Instead, two-sentences were removed (page 5, lines 14-18).

This terminated an owner's right to provide a proxy to their board of directors as an entity or to be split among directors.

This removal altered the entire purpose of this section which is to have consistent proxy wording for the condominium property regimes and the planned community associations.

There are also unintended consequences that will result from this change.

In the 1970s and early 1980s, there were no options for providing proxies to a board majority. Homeowners simply gave their proxies to one person, the board president.

In some cases, this made the president the person with the most votes, controlling the election and meeting, regardless of the board's preferences. The addition of an option to designate the board as an entity or board members individually provided a balance that has worked to this day.

I strongly suggest you use the same proxy wording from §514B-123 in this section. This will ensure that the rights given to owners from the condominium statute are propagated to planned community associations. It will also provide consistency in our community with the proxy forms.

2. Section 1 also added wording terminating the right of a developer or owner of units in a planned community to vote for units that were still undeveloped.

No testimony was presented during the hearings on this bill to request for or support this change.

This removal alters the entire purpose of this section which is to have consistent proxy wording for the condominium property regimes and the planned community associations.

I'm not very sympathetic to developers, especially after reviewing many of the developer bylaws that have encumbered Hawaii's associations.

However, the termination of the developers' rights to vote will have some unintended consequences.

Developers who have no voting rights will simply change the association documents so that there are no association meetings until they've completely sold all of their units. They'll establish an advisory committee of owners and completely control the board as long as they own property.

If there are required association meetings, the developer simply won't be present, ensuring that there is no quorum. This will keep the same board in office.

3. Section 4 provides an effective date of January 1, 2011. We support this. It provides time for planned community associations to change their proxy form to comply with the new law.

We request that the committee approve this bill with amendments so:

- (a) **the proxy wording in HRS §421J-6 matches the current proxy wording in the condominium statute HRS §514B-123, and**
- (b) **the developers' rights to vote are retained.**

Our committee looks forward to any discussions of this proposal or improvements to clarify any part of Chapter 421J or 514B.

I may be contacted via phone: 423-6766 or by e-mail: hsap.lc@gmail.com. Thank you for the opportunity to present this testimony.

Sincerely,



Steve Glansstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee



Princeville *at Hanalei* Community Association

Enhancing the Quality of Life and Princeville Experience for its Members

February 16, 2010

Honorable Chair Representative Robert N. Herkes
and Members of the Committee on Consumer
Protection & Commerce; and

Honorable Chair Representative Jon Riki Karamatsu
and Members of the Committee on Judiciary

Re: HB 2624, HD 1 – Relating to Planned Community Associations; Thursday, February 18, 2010;
Conference Room 325, 2:00 p.m.

Dear Representatives Herkes and Karamatsu and Members of the Committees:

My name is Rohit J. Mehta and I am testifying on behalf of the Princeville at Hanalei Community Association ("PHCA"), a planned community association under Chapter 421J, Hawaii Revised Statutes. PHCA is opposed to the adoption of HB 2624, HD1, a flawed bill.

The bill is based on the erroneous assumption that Planned Community Associations should be regulated in the exact manner as condominiums. Planned Community Associations are not creatures of statute, but exist by virtue of diverse governing documents intended to serve the needs of associations created for widely differing purposes. For example, a commercial development with one residential unit may be governed by the law or a large subdivision with residential dwellings to be constructed in the future. Among other things, the bill proposes that undeveloped lots not be entitled to vote yet. Yet some Planned Community Associations may have no developed lots or have only a few. In the first case no one could vote. In the second, why should the first homeowner to construct a house then control the association? Some associations are established merely to maintain roadways or park areas serving private homeowners or in a larger setting, perhaps a sewage treatment facility. As many are self-managed or may have management agreements with particular homeowners, providing by law that that such homeowners cannot vote in their own capacity is inappropriate. I am a homeowner at Princeville, one of several thousand, yet I would not be able to vote by proxy on matters affecting my residence. I do not know if my wife would be able to vote either. Condominiums exist because they have been created and are wholly regulated under one of Hawaii's two condominium laws. Simply taking random provisions under those laws and applying them to Planned Community Associations is not only unwarranted and ill-considered but would have many unintended adverse consequences.

Based on the above, we respectfully request that HB 2624, HD1 be held. Thank you for your consideration with this testimony.

PRINCEVILLE AT HANAIEI COMMUNITY ASSOCIATION

Rohit Mehta

Dr. Rohit J. Mehta, General Manager

February 17, 2010



Mililani Town Association

95-303 Kaloapau Street
Mililani Town, HI 96789
Phone (808) 623-7300

Rep. Robert N. Herkes, Chair

Rep. Glenn Wakai, Vice-Chair

Comm. on Commerce and Consumer Protection VIA EMAIL: CPCTestimony@Capitol.hawaii.gov
State Capitol
Honolulu, HI 96813

Re: HB 2624 Testimony in OPPOSITION: Relating to Planned Community Associations
Hearing: February 18, 2010, 2:00 pm, Conf Room 325

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

My name is Will Kane, Vice-President of the Mililani Town Association (MTA). As you may be aware, MTA encompasses 16,000 plus units involving both single family units and townhouse projects.

MTA does NOT support this bill and believes it should be deferred for the following reasons:

1. This bill would cause severe financial difficulties on Planned Community Associations (PCA's) due to the requirement stating...

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

By expanding and adding the requirements from a 514B to a 412J for an association as large as Mililani, we have projected that additional postage, copying and other costs alone would be over \$100,000 a year.

2. Change for the sake of matching 421J to 514B, absent a valid premise that fits all associations, along with there being no benefit but rather a negative cost impact to members of large associations, does not justify legislation to make this change.

Due to the reasons stated above, MTA respectfully asks that HB 2624 be deferred. Thank you for your consideration in this matter. If you have any questions, please feel free to contact me at wkanemta@yahoo.com.

Sincerely yours,

William T. Kane II

Will Kane
Vice-President, Board of Directors

**HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

AND

HOUSE COMMITTEE ON JUDICIARY

February 18, 2010

House Bill 2624, HD 1 Relating to Planned Community Associations

Chair Herkes, Chair Karamatsu, members of the House Committee on Consumer Protection and Commerce and members of the House Committee on Judiciary, I am Rick Tsujimura, representing Marriott Vacation Club International (Marriott).

Marriott opposes House Bill 2624, HD 1 as written. Section 421J-4 is amended to add a new provision which states:

“(b) No developer or owner of units in a planned community, or their representative, may cast a vote for undeveloped units in that planned community.”

This language is contrary to documents that are in place for almost all projects in Hawaii. It also runs contrary to existing law, which recognizes the developer's rights to vote the vote of the units it owns. This provision has no counterpart in condominium law, and its inclusion will lead to a chill on development, and the consequent loss of construction jobs.

We request that the language be deleted.

Thank you for the opportunity to present this testimony.

Richard S. Ekimoto
1001 Bishop Street, Ste 780
Honolulu, Hawaii 96813

February 16, 2010

The Honorable Representative Rep. Robert N. Herkes, Chair
Committee on Commerce, Consumer Protection, and Housing

The Honorable Representative Jon Riki Karamatsu, Chair
Committee on Judiciary

**RE: House Bills 2110 & 2624 , Hearing on Thrusday, February 18, 2010 at 2:00
PM in Conference Room 325**

My name is Richard S. Ekimoto and I reside in a planned community and have represented community associations as an attorney for over 20. I respectfully request that HB 2110 and 2624 be held by the committees.

HB 2110 would override the decisions of planned community associations and their members to prohibit taping of their meetings. Many members feel that they should not be taped without their consent. What makes this practice even worse is that many times, those individuals that are taping meetings do so to intimidate other that disagree with them. If a member wishes to tape an association meeting, he or she can seek to obtain the approval of the membership. If he or she cannot get sufficient votes to permit the taping, he or she should not be able to force this on the other residents. Personal privacy should mean that the legislature should not force me to accept being taped against my wishes.

HB 2624, HD1 omits the provision for granting of proxies to the Board. There is no reason that the legislature should take away the owners' right to give their proxy to the Board if they wish to do so. The current law does not require owners to give the Board their proxies, it simply gives them the option. Every owner should have the choice to give their proxy to whomever they wish, wether it is to the Board or someone else.

HB 2624, HD1 also eliminates the right of developers or owners of unbuilt units from voting. Why shouldn't an owner (whether a developer or otherwise) be able to vote. They own units in the community and should be able to exercise their democratic right to decide how the community should be operated. Just because I haven't built on my lot should not prevent me from voting how the community is operated. Some believe that the developer should have no say in the operation of the community. However, developers normally have a large amount of money tied up in their developments often for decades (large planned communities are built over a long period of time) and it is their financial interest that the community succeed. You may wish to check with the lenders to

The Honorable Representative Rep. Robert N. Herkes, Chair
Committee on Commerce, Consumer Protection, and Housing

The Honorable Representative Jon Riki Karamatsu, Chair
Committee on Judiciary

Page 2

determine whether the prohibition on voting unbuilt units would affect the ability to obtain mortgages on units in planned community associations.

Except for the above deviations from the Condominium Property Act, HB2624 (both the original version and HD1) also attempts to conform (but not completely) the statute on proxies for planned community associations with the Condominium Property Act. There is no reason to make the provisions the same and many reasons to make them different. What some people do not understand is that while really large condominiums are rare (the largest condominium in the State has less than 1000 residential units), planned community associations often consist of 5,000 or more units. These numbers mean that the cost concerns for even the largest condominium is dwarfed by the costs for a planned community association. For example, increasing the 100 word statement to one page in a 10,000 unit community would mean that the association would have to mail out 100 pages of statements to 10,000 owners if only 1/10th of one percent of the owners requested permission to mail out statements at the Association's expense. That's copying charges for a total of 1,000,000 pages plus postage, envelopes and labor.

Even for those planned community associations that are smaller, the differences between the Planned Community Act and the Condominium Property Act exist because they are different types of entities. The proposed change prohibiting solicitation of proxies on the common elements is an excellent example. Planned community associations do not have common elements, only condominiums have common elements. Moreover, a different dynamic exists in planned community associations than in a condominium. In a condominium, the legislature wanted owners to be able to go door to door to solicit proxies. While I object to the idea that someone can come to my condominium unit and harass me about proxies, I at least understand the reasoning for the law in a high rise condominium. In a planned community, that same dynamic does not exist. I don't want an owner setting up a table to harass me while I'm at the pool or other common areas. There is already a mechanism in Hawaii Revised Statutes §421J-8 that will allow owners in a planned community association to attempt to solicit proxies by mail.

For these reasons, I respectfully request that you hold these bills.

Very truly yours,



RICHARD S. EKIMOTO

wakai2-Daniel

From: Antonette Port [portr001@hawaii.rr.com]
Sent: Wednesday, February 17, 2010 11:20 AM
To: CPCtestimony
Subject: HB 2624, HD 1

Rep. Robert N. Herkes, Chair
Committee on Consumer Protection and Commerce

Rep. Jon Riki Karamatsu, Chair
Committee on Judiciary

Hearing: Thursday, February 18, 2010

Testimony: HB 2624, HD 1

Dear Representatives:

This testimony is to provide support for HB 2624, HD 1 which would provide some of the same rights to Planned Community Associations that condominium owners currently have under Chapter 514B with respect to proxies. The Boards of Planned Community Associations have broad powers that need to be balanced against the rights and responsibilities of individual home owners. The recent flap over American flags provides just one example of why such rights of home owners need to be protected.

Individual home owners within Planned Community Associations should have the opportunity to solicit proxies in the same way that condominium owners do at present. Therefore, I urge you to support HB 2624, HD 1.

Thank you for this opportunity to submit my testimony in support of HB 2624, HD 1.

Richard Port