HAWAIʻI STATE ASSOCIATION OF PARLIAMENTARIANS
LEGISLATIVE COMMITTEE
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March 24, 2013

Honorable Rep. Angus L. K. McKelvey, Chairman
Consumer Protection and Commerce Committee
Conference Room 325
State Capitol
415 South Beretania Street
Honolulu, HI 96813

Honorable Rep. Derek S. K. Kawakami, Vice Chair
House Consumer Protection and Commerce Committee
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in OPPOSITION to SB507 SD1; Hearing Date March 27, 2013 4:00 p.m.; sent via Internet

Aloha Chair McKelvey, Vice-Chair Kawakami, and Committee members,

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 practice in 1983 (over 1,400 in 30 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.

This testimony is presented in opposition to the proposed change to HRS §421J, the state law governing Planned Community Associations ("PCA").

A. SB 507, SD1, subsection (a)

This subsection (page 1, lines 8-17 through page 2, lines 1-5) proposes to at least:

1. Mandate a minimum of 14 days' notice of any regular annual meeting[1] or special meeting of an association;
2. Permit the "secretary or any officer" to provide the notice; and
3. Provide for hand delivery, U.S. mail, e-mail, or posting of the notice on an association website.

Most Planned Community Associations (PCA) are incorporated. They range in size from just a few owners to organizations such as Maui Lani Association (1,116 owners in development up to 3,700), Waikoloa Village Association (3,036 owners) or Mililani Town Association (about 16,000 owners).

Attempts to impose a "one size fits all" simply constitutes micro-management and an unwarranted interference in the principle of self-governance without a compelling and clearly demonstrated public interest.

Incorporated PCAs have to comply with HRS Chapter 414D. HRS §414D-105[2] **already requires that notice be given in a fair and reasonable manner**. The statute provides a "safe harbor" provision deeming 10-60 days' notice as fair and reasonable.

Additionally, many PCAs already contain notice requirements in their documents.

There has been no prior written testimony about a short, unfair, or nonexistent notice requirement for PCA association meetings.

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[1] The term "regular annual meeting" doesn't exist in Chapters 414D, 421J, 514B, nor in *Robert's Rules of Order Newly Revised* (11th ed.), which is mandated by HRS §421J-6. Likewise, there is no"regular special meeting." There are annual meetings, adjourned annual meetings (continuation of an annual meeting), special meetings, and adjourned special meetings.

[2] §414D-105 Notice of meeting. (a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of subsection (c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided that notice of matters referred to in subsection (c)(2) shall be given as provided in subsection (c).

(c) Notice shall be fair and reasonable if:

(1) The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten or more than sixty days before the meeting date;

(2) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under sections 414D-150, 414D-164, 414D-182, 414D-202, 414D-222, 414D-241, and 414D-242; and

(3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 414D-107, however, notice of the adjourned meeting shall be given under this section to the members of record as of the new record date. [L 2001, c 105, pt of §1; am L 2002, c 130, §46]

If a PCA board wishes to use association funds for proxies that include an election of directors, it must comply with additional notice requirements in HRS §421J-4(d)[3]. **This adds an additional 30 days** to any distribution of proxies which is usually sent with the meeting notice.

A set of controls already exists to ensure proper notice to owners. Legislation is not necessary to fix a problem that doesn't exist.

B. SB 507, SD1, subsection (b)

This subsection requires an agenda to contain certain items. The agenda must include the following:

1. General nature of and rationale for any proposed amendment to the declaration or bylaws; and
2. Any proposal to remove a member of the board.

(page 2, lines 8-10 and liens 13-14)

However, these items appear to be contradicted by the statement in subsection (c) that states that this section shall not be interpreted to"preclude any association member from proposing an amendment to the declaration or bylaws or proposing to remove a member of the board at an association meeting." (Page 2, lines 15-18)

Thus, the drafters of the notice and agenda (i.e. the president, secretary, or a management firm) have to follow certain requirements for the agenda, but individual owners do not.

The notice requirement for the drafters of the notice and agenda is easily overridden by their solicitation of an individual owner (instead of an officer) to propose an amendment to the declaration or bylaws or a removal of a director.

These items seem to parallel various sections of the Condominium Property Act, Chapter 514B (§514B-121 on declaration, bylaw amendments, and removals).

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[3]§421J-4 Proxies. [...]

(d) Any board of directors that uses association funds to distribute proxies that include the election of directors shall first post notice of its intent to distribute proxies in prominent locations within the project at least thirty days prior to its distribution of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for nomination to the board accompanied by a statement, the board shall mail to all owners either:

(1) A proxy form containing the names of all owners who have requested nomination to the board accompanied by their statements; or

(2) A proxy form containing no names, but accompanied by a list of names of all owners who have requested nomination to the board and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies. [...]

[L 1997, c 132, pt of §1; am L 2001, c 191, §1]

There are several reasons why the notice provisions from the Condominium Property Act are incompatible with PCAs.

1. As the proposed bill would do for PCAs, Chapter 514B provides that any condominium owner can propose an amendment to the declaration or bylaws or propose to remove a member from the board at an annual meeting, without prior notice.
2. However, Chapter 514B protects the stability of condominium associations from the surprise actions of a temporary majority at one meeting by requiring 67% of all owners to adopt amendments to the declaration and bylaws. It provides similar protection for boards of directors by prescribing a greater than 50% voting requirement of all owners for removal and replacement of directors.
3. It might be thought that similar voting requirements could be added to Chapter 421J's regulation of PCAs to obtain similar protection from a small group of owners being able to seize control of the board at an annual meeting. However, that would lead to another problem for many PCAs.
5. Condominiums vary from 2 units to about 1,200 units for the larger condominiums in Hawaii. By contrast, some PCAs have owner populations as high as 16,000. Requiring the very high percentage to adopt amendments to PCA declarations and bylaws that exists under 514B for condominiums would make it nearly impossible for many large PCAs ever to corral enough owners successfully to adopt those amendments.

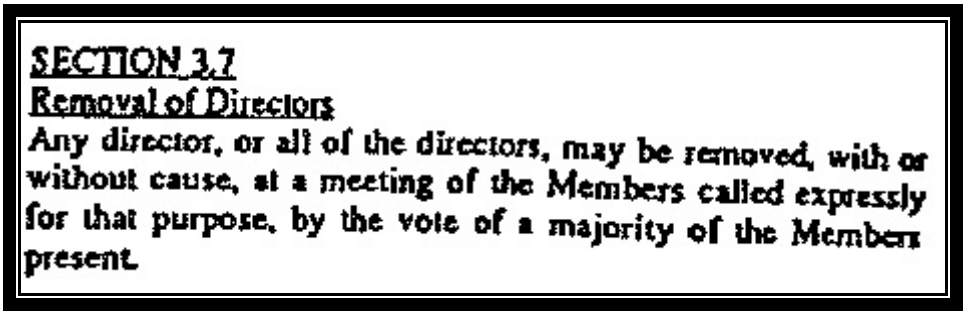
PCAs have declarations and bylaws that recognize the importance of the previous notice requirement and differing voting thresholds for amendment of their documents and removals of directors.

The principles of notice and amendments in the Condominium Property Act to PCAs are incompatible with the reality of the unique differences existing in Hawaii's PCAs.

C. SB 507, SD1, subsection (c)

This subsection ensures that **any member** can propose an amendment to the declaration or bylaws or propose to remove a board member at an association meeting.

The following is an example of a bylaw that exists in a current PCA. Their name is not provided because this testimony can provide a roadmap for a vocal minority to become a surprise majority at an annual meeting and takeover a PCA board of directors.



SECTION 3.7
Removal of Directors
Any director, or all of the directors, may be removed, with or without cause, at a meeting of the Members called expressly for that purpose, by the vote of a majority of the Members present.

The plain language of the bylaw protects the process by providing that a removal must be at a meeting of the Members called expressly for that purpose. This particular PCA has a quorum of 30% of the members.

If SB 507, SD1 becomes law, it can be interpreted to eliminate the previous notice requirement in the above §3.7 (i.e. "Meeting of the Members called expressly for that purpose") and permit a temporary majority to take over a PCA board of directors.

Even the addition of a minimum voting requirement similar to the Condominium Property Act [HRS §514B-106(f)] won't resolve this issue because a minimum voting requirement would (a) render removals ineffective with large associations and (b) enhance surprise removals with small associations.

D. SB 507, SD1, subsection (d)

This subsection (page 2, lines 19-21) states that this section will not be interpreted to apply to (a) any board meetings or (b) committee meetings of a planned community association.

This subsection makes no sense because subsections (a), (b), and (c) clearly relate to meetings of the association and not of the board of directors or committees.

E. Summary

The bill is fatally flawed. There has been no prior written testimony in either the House or the Senate that provides any compelling reason for this type of legislation. The bill's proponents should have the burden of providing a compelling reason for this legislation.

I hope this provides some insight to the difficulty PCAs will have if this bill become law.

Please protect the thousands of people in Hawaii's Planned Community Associations and hold this bill.

If you require any additional information, your call is most welcome. 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 Glanstein

Digitally signed by Steve Glanstein
DN: cn=Steve Glanstein, o, ou, email=Steveghi@Gmail.com, c=US
Location: Honolulu, HI
Date: 2013.03.25 15:13:40 -10'00'

Steve Glanstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee

I speak in opposition to SB507.

As written, HB507 disenfranchises the majority of members, and sets up a situation where a minority group could push through changes to the By-laws.

In the case of my community, changes to the By-laws require advance written notice with specifics of the proposed change, and a 75% approval. As with most community/condominium associations, we require 20% present or by proxy to have quorum at an annual meeting. SB507 would allow for 20% to make changes without 80% able to fully participate in the process! By definition, the annual meeting is an opportunity to change by-laws, and as written, SB507 does not require that the specifics of proposed changes be included in the meeting notice, only that the notice state, …"as a purpose the proposed amendment, repeal or adoption of By-laws."

In a democratic society, changing the rules is difficult for a reason. The hurdles of providing advance notice and requiring approval by super-majority assure that all affected by the change have a chance to participate in the decision-making process. Passing SB507 would be akin to allowing the city or state to add a measure to the ballot on election day, where those that vote in person have no chance to review/study the implications, and those who vote by absentee ballot never get a chance to see, let alone vote on, the measure.

Further, SB507 strips associations of the right to tailor rules for amending the By-laws to the specific needs of the association. Association By-laws often consider the type of development (is it single-family residential or vacation rental), the size (the impact of a majority of 50 members has a different impact than a majority of 5000 members), the age of the community (older communities tend to have a higher number of absentee homeowners who rent their property). SB507 is the State micromanaging private contracts between homeowners and their association.

Respectfully submitted,

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 25, 2013 1:27 PM
To: CPCtestimony
Cc: mslaurah@hawaii.rr.com
Subject: *Submitted testimony for SB507 on Mar 27, 2013 16:00PM*

SB507
Submitted on: 3/25/2013
Testimony for CPC on Mar 27, 2013 16:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Laura Hirayama	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing , improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Hearing: CPC: Wednesday, March 27, 2013, 4:00PM, Conf Room 325 3/24/13
Testimony on: SB 507 SD 1; Oppose R1

Chair McKelvey, Vice-Chair Kawakami and Committee Members:

My name is Eric Matsumoto. I have served as President of MTA for 21 years over a 33 year period. I also served as President of CAI Hawaii, and as a member and later as Chair of the Homeowners Committee of CAI National. I am testifying today as an individual.

This bill is not workable and leaves PCAs open to unintended consequences, in addition to unnecessary and redundant requirements, as follows:

Page 1, Line 8: Specifying fourteen days in advance of regular annual meetings undermines PCAs from the 10 - 60 day notification requirement under HRS 414D-105(c)(1), given that PCAs are created with Article of Incorporation, that results in PCAs being of sizes from a few to nearly 16,000 units and have differing needs across the size and complexity spectrum. Additionally, PCAs do have within their legal documents annual meeting notices, as opposed to AOAOs under legislation, HRS 514A/B, that have a standardized notice requirement, where by contrast, AOAOs have from a few to about 1200 with limited amenities and common area. Further, HRS 421J also imposes an additional 30 days if proxies are to be distributed by the board. This provision creates more cumbersome legislated requirements that is redundant and unnecessary.

Page 2, Lines 6 - 14: Line 7: This is redundant and unnecessary since covered by HRS 414D-105(c)(1). Lines 8 - 14: These are redundant and unnecessary since already covered by HRS 414D-187/138. Additionally, HRS 414D-182 and 138 provide additional requirements for amendments to articles of incorporation and requirements for removal of directors, respectively. As such, this piecemeal approach to mirroring HRS 514A/B requirements will create a cumbersome process where 421J, 414D and the PCA's legal documents would have to be reviewed for compliance. Accordingly, creating more opportunity for confusion and non-compliance.

Page 2, Lines 15 - 18: When bad actors can bring declaration and by-law changes and removal of directors to the floor of annual meetings without prior notice, with as small a number as a simple majority of the members/proxies present at the meeting, they can create huge problems and even take over the association in some instances. It is unconscionable and would create havoc in PCA governance. It should be noted that each PCA has the specific percentage of votes/proxies covered in their legal documents to pass by-law amendments, removable of directors, etc.

Based on the above, there are serious deficiencies with this bill. PCAs are not all created equal under individual articles of incorporation and DCCR's, with different membership sizes from a few to nearly 16,000, different square footage of land area from small parcels to several thousand acres and miles of planting strips, differing number and kinds of amenities from none to seven recreation centers with 6 swimming/wading pools, several party halls, several tennis/basketball courts, and walking trails, each with differing needs, both administratively and operationally, resulting in different optimum operating parameters. Whereas, AOAOs are vastly different with respect to the governing document of creation, having limited membership sizes from a few to a max of about 1200, more compact square footage of land area, limited amenities and common areas.

This attempt to mirror AOAO requirements is unwise, unnecessary, and problematic for PCAs, especially for the unintended consequences it can cause . Accordingly, request this bill be deferred.