



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

February 2, 2015

Honorable Rep. Angus L.K. McKelvey, Chair
House Committee on Consumer Protection & Commerce
Hawaii State Capitol, Room 326
415 South Beretania Street
Honolulu, HI 96813

Honorable Rep. Justin H. Woodson, Vice Chair
House Committee on Consumer Protection & Commerce
Hawaii State Capitol, Room 305
415 South Beretania Street
Honolulu, HI 96813

**RE: Testimony IN FAVOR WITH COMMENTS regarding HB275; Hearing Date
February 4, 2015 at 2:45 p.m. sent via Internet**

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

Thank you for the opportunity to provide testimony on this bill on behalf of the Hawaii State Association of Parliamentarians ("HSAP").

We are in favor of this bill. It provides two solutions to problems that have occurred in Hawaii for several years.

I will address each of them below:

A. Section 1 -- Association Meetings; Failure to obtain a quorum

This section balances the importance of having an election and tax resolution with association quorum problems created by many developers of condominium projects.

It provides that the board must at least continue an annual meeting once if there is no quorum.

COMMENT: In order to prevent possible abuse at a no quorum meeting by a temporary majority or a recalcitrant board of directors, we recommend that the board be required to continue the meeting **no less than 21 days** and no more than 90 days.

This will prevent a temporary majority at a no quorum meeting from taking unfair advantage of a reduced quorum and simply continuing a meeting for 2-3 days. They could then control an election if many people didn't have the chance to come to the next scheduled meeting. The 21 day period would provide equal time for all parties to come to a continuation meeting.

Suggested wording is below with proposed changes highlighted and bolded:

§514B-____ Association meetings; failure to obtain a quorum. (a) If the association is unable to obtain a quorum at the first annual meeting of the association in any year, then the association shall continue the meeting at least once **for no less than twenty-one days and [within]** no more than ninety days.

(b) If the association does not continue the first meeting pursuant to subsection (a), then the board of directors shall call a continuation of the annual meeting **[within ninety days] no less than twenty-one days and no more than ninety days from the date of the first meeting with no quorum.**

(c) The quorum requirement at the continued meeting shall be reduced to one-half of the requirement as stated in the bylaws.

B. Section 2 -- Relating to Property Managers

The proposed wording has some ambiguity regarding the vote required to terminate a managing agent contract. We believe that this ambiguity can be exploited to the detriment of one or more associations.

Subsection (h) states, “(h) A managing agent may be terminated by vote of a majority of the unit owners at an association meeting. If the employment of a managing agent is terminated, the managing agent's contract shall continue for no more than three months from the date of termination and the board shall employ a different managing agent.”

There is ambiguity whether this is (a) a vote of a “majority of the unit owners” which must be at an association meeting or (b) a vote of a majority of the “unit owners at an association meeting.” Assume 60% of the owners are present at an annual meeting. Using the first interpretation, more than 50% of all unit owners must vote for the contract termination. Using the second interpretation, more than 30% must vote for the contract termination.

The original intent of this bill was to set the threshold to the level of more than 50% of all unit owners because that number was also sufficient to remove and replace board members [HRS §514B-106(f)].

We suggest more definitive language in order to avoid misuse of this proposed legislation.

Suggested wording is below with proposed changes highlighted and bolded:

“(h) ~~[A managing agent may be terminated by vote of a majority of the unit owners at an association meeting.]~~ **A managing agent may be terminated at an association meeting by vote of a majority of the unit owners.** If the employment of a managing agent is terminated, the managing agent's contract shall continue for no more than three months from the date of termination and the board shall employ a different managing agent.”

We believe this balances the board's responsibility for hiring a proper managing agent with the association's right to exercise veto power in a way that doesn't become micro-management.

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, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee
SG:tbs/Attachment

Testimony
Hawaii Community Associations Institute (CAI)

HB 275
IN SUPPORT

I am submitting testimony on behalf of the Legislative Action Committee of Community Associations Institute (CAI). HB 275 addresses important issues condominiums face today. HB 275 supports condominium owners by ensuring that an a director election is held each year at an annual meeting. Furthermore, it allows the elected directors to select the managing agent and voids bylaw provisions that mandate a super majority of all owners to change a managing agent in some case 80%. Thus, directors are prevented from making business decisions in the best interest of the association by such provisions.

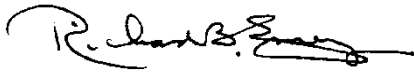
Annual Meeting Quorum: A loophole in the current law allows directors to serve without having to stand for reelection. The bylaws of a condominium provide for an annual meeting; a meeting where directors are reelected and a mandatory tax resolution to file the association's income tax is adopted. If the association fails to obtain a quorum, board may declare that they conducted the annual meeting with a result of no quorum and to avoid an election. The boards wait another year before scheduling the next annual meeting. Thus a director whose term has expired never stands for reelection and serves beyond their term. There are examples where such practice has occurred for years, particularly when a board in under fire by homeowners for its decisions. Boards have some ability to influence a quorum by the process they take to solicit proxies. The unintended consequence is that the association never approves its tax resolution for the tax-free rollover over of its funds which potentially imposes a future tax liability on the association. HB 275 mandates a second meeting within 90 days and reasonably reduces quorum assuring that directors will stand for reelection at the end of their term and assures the tax resolution being adopted. Requiring an annual meeting and thus an election is a fundamental obligation of an association.

Managing Agent Employment: There is an alarming trend in new associations where bylaws provide difficult or in some cases impossible circumstances for a board to terminate the Managing Agent. In some cases, the board has no authority to terminate a management contract without the prior vote of the majority of all homeowners not just those in attendance, and in some cases as much as 80% of all homeowners. Clearly the board is charged with the fiduciary duty in the management of the association and should be free from constraints that prevents them from making business decisions for the benefit of the association. In every new association, the owners inherit the Managing Agent and were not involved with the initial selection by the developer. A Managing Agent is no more than a business that should earn its contract though its service and trust of the board. The board will be most knowledgeable about its every day dealings with the Managing Agent. On the other hand, boards serve the homeowners. If a majority of homeowners want a new Managing Agent the board should be required to comply.

HB 275 allows the board (the Principal) to employ and discharge the Managing Agent while respecting the rights of homeowners to require a management change. It further recognizes that a time share organization has very different needs and thus exempt from this provision.

Community Associations Institute SUPPORTS HB 275.

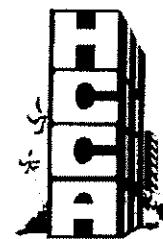
Sincerely,

A handwritten signature in black ink, appearing to read "Richard Emery", with a stylized flourish at the end.

Richard Emery
CAI Legislative Action Committee



**Hawaii Council of Associations
of Apartment Owners**
DBA: Hawaii Council of Community Associations
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 2, 2015

Rep. Angus L.K. McKelvey, Chair
Rep. Justin Woodson, Vice-Chair
House Committee on Consumer Protection and Commerce

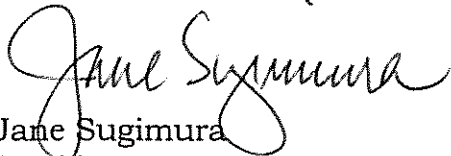
Re: HB275 RELATING TO CONDOMINIUMS
Hearing: Wed., February 4, 2015, 2:45 p.m., Conf. Rm. #325

Chair McKelvey, Vice-Chair Woodson and Members of the Committee:

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

HCAAO agrees with the intent and purpose of the HB275 and support passage of this bill. We join in the testimony in support of this bill by Hawaii Community Associations Institute (CAI), a copy of which I have enclosed with this testimony.

Thank you for the opportunity to testify on this matter.


Jane Sugimura
President

Enclosure

Testimony
Hawaii Community Associations Institute (CAI)

HB 275
IN SUPPORT

I am submitting testimony on behalf of the Legislative Action Committee of Community Associations Institute (CAI). HB 275 addresses important issues condominiums face today. HB 275 supports condominium owners by ensuring that an a director election is held each year at an annual meeting. Furthermore, it allows the elected directors to select the managing agent and voids bylaw provisions that mandate a super majority of all owners to change a managing agent in some case 80%. Thus, directors are prevented from making business decisions in the best interest of the association by such provisions.

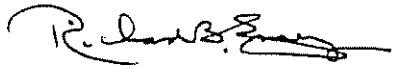
Annual Meeting Quorum: A loophole in the current law allows directors to serve without having to stand for reelection. The bylaws of a condominium provide for an annual meeting; a meeting where directors are reelected and a mandatory tax resolution to file the association's income tax is adopted. If the association fails to obtain a quorum, board may declare that they conducted the annual meeting with a result of no quorum and to avoid an election. The boards wait another year before scheduling the next annual meeting. Thus a director whose term has expired never stands for reelection and serves beyond their term. There are examples where such practice has occurred for years, particularly when a board in under fire by homeowners for its decisions. Boards have some ability to influence a quorum by the process they take to solicit proxies. The unintended consequence is that the association never approves its tax resolution for the tax-free rollover over of its funds which potentially imposes a future tax liability on the association. HB 275 mandates a second meeting within 90 days and reasonably reduces quorum assuring that directors will stand for reelection at the end of their term and assures the tax resolution being adopted. Requiring an annual meeting and thus an election is a fundamental obligation of an association.

Managing Agent Employment: There is an alarming trend in new associations where bylaws provide difficult or in some cases impossible circumstances for a board to terminate the Managing Agent. In some cases, the board has no authority to terminate a management contract without the prior vote of the majority of all homeowners not just those in attendance, and in some cases as much as 80% of all homeowners. Clearly the board is charged with the fiduciary duty in the management of the association and should be free from constraints that prevents them from making business decisions for the benefit of the association. In every new association, the owners inherit the Managing Agent and were not involved with the initial selection by the developer. A Managing Agent is no more than a business that should earn its contract though its service and trust of the board. The board will be most knowledgeable about its every day dealings with the Managing Agent. On the other hand, boards serve the homeowners. If a majority of homeowners want a new Managing Agent the board should be required to comply.

HB 275 allows the board (the Principal) to employ and discharge the Managing Agent while respecting the rights of homeowners to require a management change. It further recognizes that a time share organization has very different needs and thus exempt from this provision.

Community Associations Institute SUPPORTS HB 275.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Emery", with a stylized flourish at the end.

Richard Emery
CAI Legislative Action Committee

woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 01, 2015 11:37 PM
To: CPCtestimony
Cc: nipmyknees@hotmail.com
Subject: *Submitted testimony for HB275 on Feb 4, 2015 14:45PM*

HB275

Submitted on: 2/1/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
tommie	HCCA	Support	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 02, 2015 8:02 AM
To: CPCtestimony
Cc: mrckima@gmail.com
Subject: Submitted testimony for HB275 on Feb 4, 2015 14:45PM

HB275

Submitted on: 2/2/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura	Individual	Oppose	No

Comments: I am opposed to this measure, particularly Section 1(c), which would give condo Boards too much power to re-elect themselves, again and again.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 02, 2015 9:34 PM
To: CPCtestimony
Cc: lukeh001@hawaii.rr.com
Subject: Submitted testimony for HB275 on Feb 4, 2015 14:45PM

HB275

Submitted on: 2/2/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Harrison Luke	Individual	Oppose	No

Comments: I oppose Bill HB275.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 02, 2015 9:37 PM
To: CPCtestimony
Cc: vye@hawaii.rr.com
Subject: Submitted testimony for HB275 on Feb 4, 2015 14:45PM

HB275

Submitted on: 2/2/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Vicki Ebesu	Individual	Oppose	No

Comments: I OPPOSE Bill HB275

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 02, 2015 9:39 PM
To: CPCtestimony
Cc: pjburniske@yahoo.com
Subject: Submitted testimony for HB275 on Feb 4, 2015 14:45PM

HB275

Submitted on: 2/2/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Penelope Burniske	Individual	Oppose	No

Comments: I adamantly oppose this bill. It will enable management companies more power and the people less. Please protect the owners of these condo units and do not vote in favor of this bill. Mahalo!

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 03, 2015 5:27 AM
To: CPCtestimony
Cc: zuul_keymasters@yahoo.com
Subject: Submitted testimony for HB275 on Feb 4, 2015 14:45PM

HB275

Submitted on: 2/3/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mark Bishop	Individual	Oppose	No

Comments: A lowered quorum requirement almost ensures that a Board can reelect itself, over and over, because most Boards receive proxies for 25%+/- of common interest!

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 03, 2015 6:17 AM
To: CPCtestimony
Cc: lila.m@hawaiiantel.net
Subject: Submitted testimony for HB275 on Feb 4, 2015 14:45PM

HB275

Submitted on: 2/3/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower	Individual	Oppose	No

Comments: Property Management firms should first make every attempt to secure the 50% quorum. In 2014, the property management firm for one of the condos in which I have interest did NOT send a first notice and many owners complained; without a notice, the meeting—of course-- had to be continued to a later date. Concurrently, and ironically, members of this firm were supporting the 2014 version of this bill. The argument in favor of that bill was that the inability to reach a quorum allowed the Board to continue to make decisions for the AOA without being subjected to an election. This year, the property management firm has staggered its delivery of the Notice of the Annual Meeting, so that some owners received that notice as early as January 15th; today, more than 2 weeks later, other owners, also residing onsite, have yet to receive their notice. How is the initial 50% quorum supposed to be met if property management firms do not make true or honest efforts? Additionally, it is not unusual for roughly 25% of common interests to be assigned by proxies to Boards; if 25% becomes adequate for a quorum, imagine all those Board members who continue to vote themselves back into office. Reducing the quorum requirement by half does not eliminate the opportunity for the incumbent Board to control the election. Despite the difficulty of obtaining the 50% quorum, keep it in place so that owners are truly represented and have the opportunity for true self-governance. Do not let property management firms dictate what is best for owners; let owners decide for ourselves. Our motive is self-governance; their motive is to manipulate and secure a business relationship. I oppose this bill in favor of owners' rights.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 03, 2015 8:03 AM
To: CPCtestimony
Cc: harendrap@leisinc.com
Subject: Submitted testimony for HB275 on Feb 4, 2015 14:45PM

HB275

Submitted on: 2/3/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Harendra M Panalal	Individual	Oppose	No

Comments: In my humble opinion, this Bill is not conducive to more transparency.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 03, 2015 12:48 PM
To: CPCtestimony
Cc: jonphaig@aol.com
Subject: Submitted testimony for HB275 on Feb 4, 2015 14:45PM

HB275

Submitted on: 2/3/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jon P Haig	Individual	Oppose	No

Comments: We have dysfunctional board members who have been causing association large Amount of monies not knowing you need to get owners approval for large capital expenditures. Electing same board members is not best interest for the association.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

February 4, 2015

LATE

The Honorable Angus McKelvey, Chair

House Committee on Consumer Protection and Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 275, Relating to Condominiums

HEARING: Wednesday, February 4, 2015, at 2:45 p.m.

Aloha Chair McKelvey, Vice Chair Woodson and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR **opposes** H.B. 275 which permits the board of an association to employ and discharge the managing agent of an association, subject to a vote of a majority of the unit owners at an association meeting. Additionally, this measure establishes provisions for condominium association annual meetings and quorum requirements. Also, it provides an exemption for a condominium project in which a majority of the units have been submitted to one or more vacation plans, or in which one or more units have been submitted to a vacation plan established by the developer of the project or by an affiliate of the developers.

The Board of Directors for a condominium association is elected by the condo owners to run the association, and it is responsible for the management and operation of the association's business affairs. However, the board may directly or, more often, hire a management company to perform the day-to-day operations. Furthermore, the Board members owe a fiduciary duty to the association for their performance of their duties.

This measure provides that a managing agent may be terminated by vote of a majority of the unit owners at an association meeting. HAR believes that this bill will interfere with one of the Board of Directors primary duties and responsibilities in selecting a managing company; which it was elected for. Also, this issue could easily become one that negatively divides the unit owners and creates uncertainty each year at the annual meeting. As such, HAR respectfully requests that this provision be removed.

Mahalo for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 03, 2015 3:45 PM
To: CPCtestimony
Cc: richard@hawaiifirst.com
Subject: Submitted testimony for HB275 on Feb 4, 2015 14:45PM

LATE

HB275

Submitted on: 2/3/2015

Testimony for CPC on Feb 4, 2015 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa, Inc.	Support	Yes

Comments: Associa manages more than 600 condominium associations through its Hawaii companies Associa Hawaii and Hawaii First. The Bill protects the homeowners by guaranteeing an annual meeting and election. It further promotes competition among management companies as it prevents poorly written bylaws from preventing the board from making business decisions in the best interest of the association.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov