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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Consumer Protection and Commerce  
Wednesday, February 10, 2021  
2:00 p.m.  
Via Videoconference**

**On the following measure:  
H.B. 495, RELATING TO CONDOMINIUMS**

Chair Johanson and Members of the Committee:

My name is Esther Brown, and I am the Complaints and Enforcement Officer of the Department of Commerce and Consumer Affairs' Regulated Industries Complaints Office (RICO). RICO offers comments related to the enforceability of this measure.

The purpose of this bill is to make violations of the voting standards for individual unit owners, and voting-related prohibitions concerning non-individual unit owners, subject to the investigatory, cease and desist, and injunctive authority the Real Estate Commission (Commission) presently exercises over licensed real estate professionals. In doing so, the bill improperly expands RICO's authority to include investigating and resolving private, non-commercial disputes about an association's election, voting forms, and voting procedures brought by private unit owners who are not subject to professional licensure requirements.

Unlike licensed real estate professionals, individual unit owners who voluntarily participate in their association's project election are not engaging in commerce affecting the public that would require a real estate license issued by the Commission. Rather,

they are private individuals living in a condominium project and determining the unique issues affecting their association. Since RICO's enforcement authority is triggered when licensure is required, it is not within RICO's purview to investigate or seek to enjoin or cease and desist this type of private conduct.

Finally, the rights and events set forth in Hawaii Revised Statutes (HRS) section 514B-123<sup>1</sup> do not involve the public and do not require a Commission-issued license. HRS section 514B-123 is a self-governing statute that provides a litany of owner self-help remedies when problems arise, in place of formal government oversight and intervention. This self-governance policy is embodied in chapter 514B and is supplemented by the educational resources available to unit owners and their governing boards. Owners can avail themselves of the remedies in this chapter, as well as educational resources provided by the Commission, for disputes related to the exercise of their right to vote.

Thank you for the opportunity to testify on this bill.

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<sup>1</sup> HRS section 514B-123 addresses: voting rights and procedures for units owned by multiple persons (subsection a); proxy-voting for units owned by multiple persons (subsection b); voting limitations for units owned by an association (subsection c); conditions for an owner's proxy to be valid (subsection d); the content of owner proxy forms (subsection e); how long an owner's proxy lasts (subsection f); whether a copy of a proxy is as good as the original (subsection g); the procedure for using association funds to distribute or solicit proxies (subsection i); restrictions on solicitations and voting by management (subsection j); and the process for and limitations on owner solicitation of proxies (subsection k).



**HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS  
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February 8, 2021

Honorable Rep. Aaron Ling Johanson, Chair  
Honorable Rep. Lisa Kitagawa, Vice-Chair  
House Committee on Consumer Protection and Commerce (CPC)  
Hawaii State Capitol, Room 329  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Testimony in OPPOSITION to HB495; Hearing Date: February 10, 2021 at 2:00 p.m. in House conference room 329/videoconference; sent via Internet**

Dear Rep. Johanson, Chairman; Rep. Kitagawa, Vice-Chair; Committee Members

Thank you for the opportunity to provide testimony on this bill. Unfortunately, I had a prior annual meeting that afternoon so may not be unable to appear via videoconference.

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 parliamentary practice in 1983 (more than 1,800 meetings in 38 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2004.

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 HB495.

**Summary of Bill:**

This Bill briefly proposes to do the following:

- (a) expand the Real Estate Commission's (REC) power to investigate any violations of HRS §514B-123, including the issuance of any cease and desist orders (Sections 1 and 2);
- (b) expand the REC's power to investigate and enjoin; and provide that any violations of HRS §514B-123 shall be a criminal misdemeanor in accordance with HRS §514B-69 and make the violator subject to a fine up to \$10,000 for each offense (Sections 3 and 4); and

(c) remove the mandate that proxies contain an option for owners to direct the majority of directors present at a meeting to vote their interest (Section 5).

**(a) expand the Real Estate Commission's (REC) power to investigate any violations of HRS §514B-123, including the issuance of any cease and desist orders (Sections 1 and 2);**

We express no opinion on item (a).

**(b) expand the REC's power to investigate and enjoin; and provide that any violations of HRS §514B-123 shall be a criminal misdemeanor in accordance with HRS §514B-69 and make the violator subject to a fine up to \$10,000 for each offense (Sections 3 and 4);**

This is an onerous change to enforcement of the existing statute. The unintended consequence is that condominium association management companies and the association Secretary will be at serious risk if there is any form of error in the proxy or its acceptance.

HRS §514B-123 contains 11 several subsections (“a” through “k”) and is complicated. A couple of examples are provided.

Example: The placement of a candidate's picture on the statement could constitute a civil and criminal violation of HRS §514B-123(i)(1) since that sub-section mandates black text on white paper.

Example: The failure to accept a timely filed proxy or acceptance of a late proxy could constitute a civil and potential criminal violation of HRS §514B-123(d)(1). This has actually happened. In one case, it happened due to a facsimile of a colored proxy that was difficult to read. In another case, it happened due to the failure of technology.

Currently, there are several options available if there's an error on a proxy which affects the meeting or a specific vote:

1. An Owner could raise a procedural *Point of Order* which demands a ruling by the chair or the assembly, if appealed [Robert's Rules of Order Newly Revised (12<sup>th</sup> ed.) 23:6].
2. a special meeting could be convened within a quarterly time interval for the purpose of ordering a recount [Robert's Rules of Order Newly Revised (12<sup>th</sup> ed.) 30:6, 48:48-50 which provide for retaking a vote and contesting an election respectively].

In egregious cases, an arbitrator or court could overturn or order a new election.

**Our position:** There are several unintended consequences of the proposed change and we urge the Committee to consider them.

**(c) remove the mandate that proxies contain an option for owners to direct the majority of directors present at a meeting to vote their interest (Section 5 of the Bill).**

**Current Status:**

The existing statute, HRS §514B-123, provides a balanced method for condominium unit Owners who wish to use association funds to:

1. solicit proxies for voting at association elections, or
2. solicit proxies for other purposes

at an annual or special meeting when association funds are used for proxy solicitations.

If association funds are to be used, there is a mandatory posting on the property and equal opportunity for owner solicitation. Owners have an opportunity to require that their names and statements of up to one page be submitted with the official meeting notice.

Owners receive a notice that contains the names and statements. This gives them an opportunity to review the statements and decide whether to execute a proxy document for the specific meeting.

Owners have several options if they wish to execute a proxy document. The proxy can:

1. name the board of directors, as a whole, based upon the decision of a majority of the directors present at a meeting;
2. name the board of directors to be split evenly among the directors present at a meeting;
3. name an individual; or
4. be restricted to quorum only.

Additionally, the current statute provides that the Owner can limit the proxy holder as the Owner desires.

The Owner's proxy is limited to the specified meeting and its adjournments. Therefore, a "forever proxy" cannot be used. The Owner has the right to may revoke a proxy or go to the meeting and vote in person.

**Our position:**

The use of proxies has proved to be an important part of the association quorum and meeting process. If an Owner is comfortable with their board, the Owner currently has the right to specify a majority of board members present ("board majority") as recipients of a proxy.

There is no reason presented for eliminating the board majority requirement on standard association proxies.

This section of the bill is similar to a House bill presented in 2019 which received a lot of opposition by community leaders (HB347). It passed the House and was not heard by the Senate Committee on Commerce and Consumer Protection.<sup>1</sup>

Last week, on February 3, 2021, the Senate Committee on Commerce and Consumer Protection deferred a similar bill (SB688).

I was a condominium owner in 1979-1985 and many proxies simply appointed the president. **Prior to 1984, there was no board majority option. The result was that association presidents received most of the proxies and controlled the meeting.**

**The right of Owners to appoint the board as an entity was originally added by Act 184 in 1984, about 35 years ago. It was extensively reviewed and included as part of the Recodification Report in 2003. This later became Chapter 514B.**

**The current system has worked well and has also been incorporated into Planned Community Associations.**

There is still no need to eliminate the board majority box on the proxy that was established many years ago.

**We ask that the Committee defer or hold this bill.**

If you require any additional information, your call is most welcome. I may be contacted via phone: 423-6766 or through e-mail: [Steveghi@Gmail.com](mailto:Steveghi@Gmail.com). Thank you for the opportunity to present this testimony.

Sincerely,

*Steve Glanstein*

Steve Glanstein, Professional Registered Parliamentarian  
Chair, HSAP Legislative Committee

SG:tbs

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<sup>1</sup> This section of the bill also similar to bills presented and never adopted in 2009 (HB2042 and SB499; HB2042 was not heard and SB499 was deferred February 24, 2009 by the Senate Committee on Commerce and Consumer Protection).

**HB-495**

Submitted on: 2/8/2021 4:04:26 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Oppose	No

## Comments:

Roberts Rules and current law provides many mechanisms to correct election mistakes. The real estate commission is not the proper entity. Many owners particularly absentee owners do not know directors by name but support the board and its operations. It's their right to give their proxy to whomever they want. This is not a major problem in the industry, In fact this Bill would make it worse with more fighting for proxies resulting in control by a very few.

**HB-495**

Submitted on: 2/8/2021 4:27:56 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch, Sr.	Palehua Townhouse Association	Support	No

Comments:

Our board believes that HB495 should definitely be passed and also may it applicable to community associations.

Mike Golojuch, Sr., President

Palehua Townhouse Association





February 8, 2021

Chair Aaron Ling Johanson  
Vice Chair Lisa Kitagawa  
Committee on Consumer Protection and Commerce  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: HB 495 OPPOSE

Dear Chair Johanson, Vice-Chair Kitagawa and Committee Members

HB 495, in Sections 1 through 4, provides investigative, regulatory and enforcement powers to the Real Estate Commission in relation to the Condominium Statute, HRS 514B. The Community Associations Institute takes no issue with these provisions.

However, Section 5 of the bill amends the requirements for a condominium association's standard proxy form by deleting the option for an owner to give his/her proxy to the Board of Directors as a whole.

Removal of this option would serve only to undermine the successful self-governance provisions of 514B by eliminating the one option used most frequently by condominium owners.

The vast majority of condominium associations are very well managed and the owners are very satisfied with the performance of their Board of Directors and management staff. Consequently, by placing their trust in the judgment of these directors they are exercising their right to express their preference for a continuation of good financial and administrative management.

There have been very few, if any, problems resulting from the use of this voting option, and elimination of it would serve no practical purpose other than to place an unnecessary limiting factor on the democratic voting process enjoyed by condominium owners.

CAI respectfully requests that the Committee delete Section 5 from this bill.

Very truly yours,

Allen Wilson  
Allen Wilson

**HB-495**

Submitted on: 2/8/2021 9:49:13 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jane Sugimura	Hawaii Council for Assoc. of Apt. Owners	Oppose	No

## Comments:

HCAAO takes no position on that part of this bill that seeks to revise the form of proxy; however, it opposes that portion of this bill that seeks to delegate enforcement of voting violations to the Real Estate Commission because that would undermine the principle of self-governance that is a foundation of condo associations.

**House of Representatives**

**Committee on Consumer Protection and Commerce**

**Wednesday, February 10, 2021 at 2:00 p.m.**

To: Chair Aaron Ling Johanson and Vice-Chair Lisa Kitagawa

Re: HB495, relating to Condominiums; Voting; Enforcement

Aloha Chair Johanson, Vice-Chair Kitagawa, and members of the House Committee on Consumer Protection and Commerce,

I am Lila Mower and I **STRONGLY SUPPORT HB495** based on my experiences.

Since 2014, I led a coalition of more than 300 condo owners from over 150 condo associations. Additionally, I serve as a Director of a condominium association board and previously served as President of two other condo associations, all on Oahu. I have also participated in over ten condo association election records reviews.

As for experience on other volunteer boards, I am the President of Kokua Council, one of Hawaii's oldest advocacy organizations which focuses on policies and practices which impact the well-being of seniors and other vulnerable people and I also serve on the Board of the over-20,000 member organization, Hawaii Alliance for Retired Americans.

Roughly one-third (1/3) of Hawaii's population lives in association-governed communities. A national trade and special interest organization, Community Associations Institute (CAI), reported in their 2020 national survey, that 30% of association residents rate their association as NOT "positive." If that CAI ratio is applicable to Hawaii, then roughly one-ninth (1/9) of Hawaii's population, or over 140,000 Hawaii residents, may rate their associations as NOT "positive."

This critical assessment appears to be supported by reports from the insurance industry that Hawaii has the most Directors and Officers Insurance (D&O) claims in the nation and among the highest insurance settlements despite having only a small fraction of homeowners associations of states like Florida, California, New York, and Illinois.

Typically, in Hawaii, a board serves as its association's government with no "checks and balances" against its centralized power. Only the votes of the owners during elections serve to check and balance the absolute power of the board.

However, elections alone do not assure that the will of owners is represented because a board may use the resources of its association to meddle with the election process. Enforceable laws must exist to prevent election interference and to protect the integrity of the process.

Elections must not only be transparent, but they must be accountable and inclusive, with equitable opportunities to compete in the election.

If the competition between candidates is purposely uneven, then those to whom the elections are tilted may not necessarily represent owners' best interests. The "board as whole" proxy option serves to confer greater voting power to the board's majority, allowing them to repeatedly vote themselves into office while depriving and defeating candidates who may have garnered even more individual owners' votes than these incumbent directors.

Many retain their seats by using proxies which are often solicited from apathetic or absentee owners who are advised to assign their proxies to the "board as a whole" by association and management employees whose livelihoods appear to depend on the incumbents seeking reelection. Some of these directors rule these associations for years, even decades, as if they were anointed.

These undemocratic and discriminatory practices must stop.

The passage of HB495 allows for an impartial and credible electoral administration, effective oversight of the electoral process, and a competitive but fair election of directors who are representative of owners. Perhaps then D&O insurance claims will decrease, and RICO and legislators will no longer have to hear from so many displeased and distressed constituents.

Please recommend passage of HB495 to protect the most important right given to condominium owners, the right to have fair and honest elections.

Mahalo.

**HB-495**

Submitted on: 2/8/2021 4:04:01 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Philip Nerney	Individual	Oppose	No

Comments:

Condominiums are private self-governing entities. Owners have adequate civil remedies for alleged violations relating to association meetings.

**HB-495**

Submitted on: 2/8/2021 4:21:01 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kate Paine	Individual	Support	No

## Comments:

Citizen reps - this is a very important necessity for the good of condo health and welfare, in serious financial state overall because of lack of protection for owners by gvmnt and management companies and ilk. Finally reps, do the right thing for the benefit of good governance representation. Any other action is simply supports lobby power against citizens.

**HB-495**

Submitted on: 2/8/2021 8:31:10 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Sadino	Individual	Support	No

Comments:

I SUPPORT this Bill, particularly the parts that repeal voting as a whole.

It is not clear to me what benefit voting as a whole accomplishes. Nothing is lost by removing this option and replacing it with voting by parts.

Voting as a whole is so obviously a strategy for the majority viewpoints to dominate over the minority viewpoints. Voting as a whole also makes it easier for bad people to stay in power and take over entire condominiums.

**HB-495**

Submitted on: 2/9/2021 1:11:17 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
R Laree McGuire	Individual	Oppose	No

Comments:

I respectfully oppose the Bill and ask that it be held by the Committee.

Mahalo.



**HB-495**

Submitted on: 2/9/2021 1:25:33 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

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

Comments:

Hi Hon Representatives,

I SUPPORT HB495 introduced around 22Jan2021.

My family has been living in Honolulu for the last 50 years. I have been on BOD of two large condominium projects for many years.

Deleting proxies for BOD as a whole may diminish possible abuses by BOD, et al.

Owners, BOD, management companies, attorneys, parliamentarians, et al. should all strive to be as transparent as possible.

Mahalo

Harendra Panalal, MSE, PE, RME

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harenp2009@hotmail.com; ushapanalal24@gmail.com

**HB-495**

Submitted on: 2/9/2021 7:10:39 PM

Testimony for CPC on 2/10/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cathy Goeggel	Individual	Support	No

Comments:

This is a great idea. Please support and pass. Thank you!

**HOUSE of REPRESENTATIVE**  
**Committee on Commerce and Consumer Protection**  
**Wednesday, February 10, 2021 at 2:00 p.m.**

To: Chair Aaron Ling Johanson and Vice-Chair Lisa Kitagawa  
Re: HB495: Relating to Condominiums; Voting; Enforcement

Aloha Chair Johanson, Vice-Chair Kitagawa, and members of the House Committee on Commerce and Consumer Protection,

I am Lourdes Scheibert and I STRONGLY SUPPORT HB495

I find it unfair when the board of directors thru the managing agent solicits proxies to the board as a whole by posting signs on property prior to the owner's annual meetings. What I find even more disturbing is when the board of directors thru the managing agent writes a letter soliciting proxies as a whole to the board and mail them out in the notice of the Owners Annual Meeting promising that the board will make the best decision. This raises the question, what about the other candidates campaigning for a directors seat? Would this be considered prejudice action by the board to exclude other candidates? Often, the veteran directors will keep voting themselves in and black-balling directors who question the authority of the majority board directors.

I have served as a volunteer condominium director from 2011-2013. Every year after, I continued to pursue re-election for important issues on health and safety for my community. Finally, I was re-elected and served as a volunteer director from 2017 to 2019. 2020, I lost my re-election bid by proxy to the board as a whole. My same concerns of health and safety issues still exist today. Since 2015, I joined a coalition of condo owners with like concerns. Today, I serve as a volunteer director at Kokua Council, the oldest advocacy organization for seniors and their families.

The proxy should be abolished: 514B-123 (c) Proxy to the board as a whole and that the vote is to be made on the basis of the preference to majority of the directors present at the meeting. Let us look at the history of the formation of this proxy and why.

A ThinkTeck Hawaii, Condo Insider, Proxy Wars 2/28/2019 by moderator Richard Emery and guest Steve Glanstein offers: **Historically, before 1983-1984, people would just give their proxies to the President. And the President of the Association would vote in behalf of the board. It would be difficult to get elected because that's the power to one person. This is what happened, historically, people would give proxies to the Association president.** The president and the majority directors are almost always in agreement. It makes no difference. In other words this proxy doesn't make sense to the explanation provided. The president is still in control along with the number of directors making up the majority.

Additionally, this proxy should not be listed as the first choice. It should follow the order as written in 514B-123. The first proxy for quorum, second to the individual, third to the board as a whole and last to the board to be SHARED by the directors present at the meeting.

The proxy: **To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage** is fair and balanced. Each director is given a fair share to vote their conscious in secret. The power is evenly distributed.

When condominium owners file complaints to any State or County government agencies, we are told this is a civil matter and we don't get involved. This proxy to the board as a whole interferes in condominium self-governance by stacking the deck with veteran directors who have served for decades. There are no term limits. Education is voluntary on how to run a government for the owners. There are no measurement to their knowledge to comply with the property's governing documents, 514B Condominium Law, Honolulu City & County building safety codes and Honolulu Fire Department safety codes.

This would serve as the stepping stone to address other concerns for SB688.

Thank-you,  
Lourdes Scheibert, Condominium Owner