

TESTIMONY OF ALISON UEOKA

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Friday, March 18, 2022
10:00 a.m.

HB 2272, HD1

Chair Baker, Vice Chair Chang, and members of the Committee on Commerce and Consumer Protection, my name is Alison Ueoka, President of the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council support efforts to encourage the prompt maintenance and repair of condominium buildings in Hawaii. Many condominiums have been built in the 1970's and 1980's and now require major repairs to keep the buildings operational. These changes are often structural as we live in an island state surrounded by salt water. Pipes in buildings do not last forever and many have exceeded their lifespan but have not been replaced. Compounded by interior sprinkler requirements or the equally or more expensive fire life safety requirements, many in condominiums are not keeping up with the necessary repairs and maintenance because of cost.

Continued losses in this area mostly due to water losses from failed pipes in buildings have caused the market for condo building insurance to stagnate and insurers are reluctant to enter the market. The way condo associations operate and how decisions are made is a flawed system that relies upon the very owners who must pay for these repairs and maintenance to make the decision to increase every owner's costs. Many times, Boards are unable to increase their maintenance fees to an appropriate level

because they cannot get the requisite number of votes. Even then, Boards are and have been thrown out by a new Board who refuses to approve increases to maintenance fees even though they may be sorely needed. Most buildings here are in need of repair or replacement and are not on schedule. The process in which to make these big decisions, get estimates, have the Board or membership vote on financing and then to get the project started takes years. In the meantime, losses continue as components in the buildings fail.

The property insurance market is changing worldwide as we are experiencing the adverse impact of climate change. In addition, aging properties and properties that are not hardened against increasing weather events will have to pay more to insure themselves. Increasing losses impact reinsurers who provide insurance for insurance companies. Reinsurers provide worldwide coverage for insurers and a hardening market directly impacts what insurers must charge for their products.

We hope that measures such as these encourage those who own units in condominiums to make the appropriate investment to maintain their units.

Thank you for the opportunity to testify.

HB-2272-HD-1

Submitted on: 3/15/2022 2:31:48 PM

Testimony for CPN on 3/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Testifying for Associa	Support	Written Testimony Only

Comments:

We support this Bill.

HB-2272-HD-1

Submitted on: 3/15/2022 5:35:41 PM

Testimony for CPN on 3/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Testifying for Palehua Townhouse Association	Support	Written Testimony Only

Comments:

Our association supports HB2272. However, we ask that in Section 7, the term "In lieu of notice" be deleted. We want to make sure that everyone receives notice either in writing or electronically. There are still a number of people who do not use computers.

Please pass this bill with the above amendment. Thank you.

Mike Golojuch, Sr., President, Palehua Townhouse Association

HB-2272-HD-1

Submitted on: 3/16/2022 12:19:56 PM

Testimony for CPN on 3/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Resident Manager	Testifying for Honolulu Tower AOA	Support	Written Testimony Only

Comments:

Honolulu Tower, built in 1982, is a 396 unit building located at the edge of Chinatown. Our population encompasses infants to centenarians. Many of our seniors do not have internet access, do not possess smart phones, smart TVs, computers, etc. For this reason, we ask you to delete lines 19 to 20 on page 12 regarding rules being on an association website in lieu of notice.

At its February 7, 2022 meeting, the board of directors voted unanimously to support this bill.

HCCA

Hawaii Council of Community
Associations
www.hawaiicouncil.com

March 16, 2022

Senator Roslyn H. Baker, Chair
Senator Stanley Chang, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: **HB 2272, HD1 Relating to Condominiums**
Testimony in Support with Comments
Hearing Date: Friday, March 18, 2022 at 10 a.m.

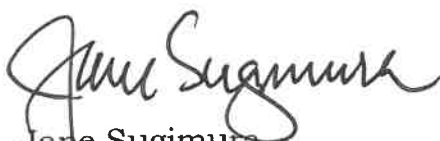
Dear Chair Baker, Vice-Chair Chang and Members of the Committee:

Hawaii Council of Community Associations (“HCCA”) agrees with the intent and purpose of HB 2272, HD1 and joins in the comments of Community Associations Institute (“CAI”) and Hawaii State Association of Parliamentarians on this bill.

Attached to this testimony are proposed amendments to HB2272, HD1 that are supported by HCCA. The restrictive government regulations promulgated by the State and local governments because of the COVID-19 pandemic prevented many condo associations from having their annual meetings because they could not meet remotely or use electronic voting procedures. Many of those emergency measures are no longer in effect and any remaining restrictions are being allowed to lapse due to the decline in Covid infections.

HCCA believes that remote annual meetings and electronic voting are the wave of the future and the proposed amendments will provide a balanced approach that will allow condo associations and their owners to take advantage of the new technology while minimizing possible abuse of those systems.

Thanks for allowing me to testify on this bill.


Jane Sugimura
President

Proposed HB2272 HD1 SD1 (Consolidated Wording)

Proposed changes to HB2272 HD1 are identified in Red with a disclosure comment in the right margin. "track changes"

HB2272 HD1 SECTION 1 – changes proposed to HRS §514B-32(a):

§514B-32 Contents of declaration. (a) A declaration shall describe or include the following:

- (1) The land submitted to the condominium property regime;
- (2) The number of the condominium map filed concurrently with the declaration;
- (3) The number of units in the condominium property regime;
- (4) The unit number of each unit and common interest appurtenant to each unit;
- (5) The number of buildings and projects in the condominium property regime, and the number of stories and units in each building;
- (6) The permitted and prohibited uses of each unit;
- (7) To the extent not shown on the condominium map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical structures or, if a unit boundary is not defined by a physical structure, by spatial coordinates;
- (8) The condominium property regime's common elements;
- (9) The condominium property regime's limited common elements, if any, and the unit or units to which each limited common element is appurtenant;
- (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium property regime if it is damaged or destroyed;
- (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations set forth in paragraph (12), the ~~approval of the owners of~~ declaration may be amended at any time by the vote or written consent of unit owners representing at least sixty-seven per cent of the common interest ~~[shall be required for all amendments to the declaration]; unless the declaration is amended by the unit owners to require a higher percentage;~~
- (12) Any rights that the developer or others reserve regarding the condominium property regime, including, without limitation, any development rights, and any reservations to modify the declaration or condominium map. An amendment to the declaration made pursuant to the exercise of those reserved rights shall require only the consent or approval, if any, specified in the reservation; and
- (13) A declaration, subject to the penalties set forth in section 514B-69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5 and chapter 205, including section 205-4.6 where applicable. In the case of a project in the agricultural district classified pursuant to chapter 205, the declaration, subject to the penalties set forth in section 514B-69(b), shall include an additional statement that there are no private restrictions limiting or prohibiting agricultural uses or activities in compliance with section 205-4.6. In the case of a property that includes one or more existing structures being converted to condominium property regime status, the declaration required by this section shall specify:

Proposed HB2272 HD1 SD1 (Consolidated Wording)

- (A) Any variances that have been granted to achieve the compliance; and
- (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming conditions, uses, or structures.

A property that is registered pursuant to section 514B-51 shall instead provide the required declaration pursuant to section 514B-54. If a developer is converting a structure to condominium property regime status and the structure is not in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5, and the developer intends to use purchaser's funds pursuant to the requirements of section 514B-92 or 514B-93 to cure the violation or violations, then the declaration required by this paragraph may be qualified to identify with specificity each violation and the requirement to cure the violation by a date certain.

(b) The declaration may contain any additional provisions that are not inconsistent with this chapter. [L 2005, c 93, pt of §2; am L 2006, c 38, §22 and c 273, §7; am L 2014, c 49, §4]

HB2272 HD1 SECTION 2– changes proposed to HRS §514B-83(a):

§514B-83 Developer's public report. (a) A developer's public report shall contain:

- (1) The name and address of the project, and the name, address, telephone number, and electronic mail address, if any, of the developer or the developer's agent;
- (2) A statement of the deadline, pursuant to section 514B-89, for completion of construction or, in the case of a conversion, for the completion of any repairs required to comply with section 514B-5, and the remedies available to the purchaser, including but not limited to cancellation of the sales contract, if the completion of construction or repairs does not occur on or before the completion deadline;
- (3) A breakdown of the annual maintenance fees, which includes the annual reserve contributions based on a reserve study, and the monthly estimated cost for each unit, certified to have been based on generally accepted accounting principles, and a statement regarding when a purchaser shall become obligated to start paying the fees pursuant to section 514B-41(b);
- (4) A description of all warranties for the individual units and the common elements, including the date of initiation and expiration of any such warranties, or a statement that no warranties exist;
- (5) A summary of the permitted uses of the units and, if applicable, the number of units planned to be devoted to a particular use;
- (6) A description of any development rights reserved to the developer or others;
- (7) A declaration, subject to the penalties set forth in section 514B-69(b), that the project is in compliance with all county zoning and building ordinances and codes, chapter 205, including section 205-4.6 where applicable, and all other county permitting requirements applicable to the project, pursuant to sections 514B-5 and 514B-32(a)(13); and
- (8) Any other facts, documents, or information that would have a material impact on the use or value of a unit or any appurtenant limited common elements or amenities of the project available for an owner's use, or that may be required by the commission.

(b) A developer shall promptly amend the developer's public report to report any pertinent or material change or both in the information required by this section. [L 2005, c 93, pt of §4; am L 2014, c 49, §8]

Proposed HB2272 HD1 SD1 (Consolidated Wording)

HB2272 HD1 SECTION 3— changes proposed to HRS §514B-108(e):

§514B-108 Bylaws. (a) A true copy of the bylaws shall be recorded in the same manner as the declaration. No amendment to the bylaws is valid unless the amendment is duly recorded.

(b) The bylaws shall provide for at least the following:

- (1) The number of members of the board and the titles of the officers of the association;
- (2) Election by the board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;
- (3) The qualifications, powers and duties, terms of office, and manner of electing and removing directors and officers and the filling of vacancies;
- (4) Designation of the powers the board or officers may delegate to other persons or to a managing agent;
- (5) Designation of the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;
- (6) The compensation, if any, of the directors;
- (7) Subject to subsection (e), a method for amending the bylaws; and
- (8) The percentage, consistent with this chapter, that is required to adopt decisions binding on all unit owners; provided that votes allocated to lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar common areas not located inside units shall not be cast at any association meeting, regardless of their designation in the declaration.

(c) The bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

(d) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(e) The bylaws may be amended at any time by the vote or written consent of at least sixty-seven per cent of all unit owners. Any proposed bylaws together with the detailed rationale for the proposal may be submitted by the board or by a volunteer unit owners group. If submitted by that group, the proposal shall be accompanied by a petition signed **and dated** by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership. **The petition shall be valid only if submitted within one hundred twenty days of the earliest signature.** The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board. The vote or written consent, to be valid, must be obtained within three hundred sixty-five days after mailing for a proposed bylaw submitted by either the board or a volunteer unit owners group. If the bylaw is duly adopted, the board shall cause the bylaw amendment to be recorded. The volunteer unit owners group shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within three hundred sixty-five days after the original petition was submitted to the board.

This subsection shall not preclude any unit owner or volunteer unit owners group from proposing any bylaw amendment at any annual association meeting. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §18]

Proposed HB2272 HD1 SD1 (Consolidated Wording)

HB2272 HD1 SECTION 4— changes proposed to HRS §514B-121:

§514B-121 Association meetings. (a) A meeting of the association shall be held at least once each year.

(b) Notwithstanding any other provision of this chapter, except as provided in subsection (e), or the declaration or bylaws of a condominium to the contrary, at any association meeting the board may direct the use of an electronic voting device regardless of whether a secret ballot is used or required. Except as provided in subsection (e), the use shall be subject to the following:

- (1) The electronic voting device and all associated equipment shall be isolated from any connection to an external network, including the Internet; ~~or as a permissible alternative, use a form of encryption comparable to that used for secured Internet web browsers~~
- (2) The board shall establish reasonable procedures to provide for the secrecy and integrity of the unit owners' votes, including but not limited to procedures that ensure the availability of a printed audit trail containing:
 - (A) The reference number ~~or Internet address~~ of the electronic voting device;
 - (B) Each common interest voted; and
 - (C) The vote that was tabulated;
- (3) A copy of the printed audit trail shall be available to owners after the meeting in the same manner provided by sections 514B-154 and 514B-154.5; and
- (4) A copy of the procedures established pursuant to paragraph (2) shall be available at no charge to any owner and a copy shall be available at any meeting at which the association uses an electronic voting

Commented [SG1]: Proposed

Commented [SG2]: Proposed

~~In the event of~~ If any conflict ~~arises~~ between this subsection and subsection (e), subsection (e) shall control.

Commented [SG3]: Proposed.

(c) Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed **and dated** by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association's expense in accordance with the requirements of the bylaws and of this part; provided further that a special meeting based upon petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition. **The petition shall be valid only if submitted within one hundred twenty days of the earliest signature.**

(d) Not less than fourteen days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be:

- (1) Hand-delivered;
- (2) Sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner; or
- (3) At the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner.

The notice of any meeting must state the date, time, and place of the meeting and the items on the agenda, including the general nature and rationale of any proposed amendment to the declaration or bylaws, and any proposal to remove a member of the board; provided that this subsection shall not preclude any unit owner from proposing an amendment to the declaration or bylaws or to remove a member of the board at any annual association meeting.

Proposed HB2272 HD1 SD1 (Consolidated Wording)

(c) All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Notwithstanding any provision to the contrary in the association's declaration or bylaws or in subsection (b), electronic meetings and electronic, machine, or mail voting ~~shall may~~ be authorized ~~by the board of directors in its sole discretion;~~

Commented [SG4]: Proposed.

- (1) During any period in which a state of emergency or local state of emergency, declared pursuant to chapter 127A, is in effect in the county in which the condominium is located;
- (2) For any association meeting for which notice was given while a state of emergency or local state of emergency, declared pursuant to chapter 127A, was in effect for the county in which the condominium is located but is no longer in effect as of the date of the meeting; provided that the meeting is held within sixty days of the date the notice was first given; ~~[or]~~

(3) For any electronic, machine, or mail voting for which notice of voting has been sent while a state of emergency or local state of emergency, declared pursuant to chapter 127A, was in effect for the county in which the condominium is located but is no longer in effect as of the deadline for the electronic, machine, or mail voting; provided that the deadline is within sixty days of the date the notice was first sent: ~~or~~

Commented [SG5]: Proposed

~~(4)(3)~~ Whenever otherwise authorized in an association's declaration or bylaws: ~~or~~

~~(5) Whenever approved in advance by (i) written consent of a majority of unit owners, or (ii) by majority vote at an association meeting.~~

Commented [SG6]: Proposed.

As used in this subsection, "mail voting" includes sending or receiving written ballots via mail, courier, or electronic transmission; provided that the transmission is a complete reproduction of the original.

(f) All association meetings shall be held at the address of the condominium or elsewhere within the State as determined by the board; provided that in the event of a natural disaster, such as a hurricane, an association meeting may be held outside the State. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2008, c 13, §1; am L 2019, c 14, §4; am L 2021, c 83 §2]

~~The association shall implement reasonable measures to verify that each person permitted to vote is a member of the association or proxy of a member.~~

Commented [SG7]: Proposed.

HB2272 HD1 SECTION 5— changes proposed to HRS §514B-122(a):

[§514B-122] Association meetings; minutes. (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.

HB2272 HD1 SECTION 6— changes proposed to HRS §514B-123(d):

(d) A proxy, to be valid, shall:

- (1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. **Hawaii-Aleutian Standard Time** on the second business day prior to the date of the meeting to which it pertains; and
- (2) Contain at least the name of the association, the date of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given.

Proposed HB2272 HD1 SD1 (Consolidated Wording)

HB2272 HD1 SECTION 7– changes proposed to HRS §514B-125(b):

(b) ~~[Following any election of board members by the association, the]~~ ~~The~~ board may ~~[, at the board's next regular meeting or at a duly noticed special meeting,]~~ establish rules for owner participation in any deliberation or discussion at board meetings, other than executive sessions. A board that establishes such rules pursuant to this subsection:

- (1) Shall notify all owners of these rules; and
- (2) May amend these rules at any regular or duly noticed special meeting of the board; provided that all owners shall be notified of any adopted amendments.

In lieu of notice, the board may make the rules available to owners on an association website.

HB2272 HD1 SECTION 8– changes proposed to HRS §514B-148(h):

(h) As used in this section:

“Capital expenditure” means an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year.

“Cash flow plan” means a minimum ~~[twenty-year]~~ thirty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that ~~[twenty-year]~~ thirty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that ~~[twenty-year]~~ thirty-year period, except in an emergency.

“Emergency situation” means any extraordinary expenses:

- (1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered;
- (3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;
- (4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or
- (5) Necessary for the association to obtain adequate insurance for the property which the association must insure.

“Major maintenance” means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.

“Replacement reserves” means funds for the upkeep, repair, or replacement of those parts of the property, including but not limited to roofs, walls, decks, paving, and equipment, that the association is obligated to maintain. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

HB-2272-HD-1

Submitted on: 3/16/2022 7:15:26 PM

Testimony for CPN on 3/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
R Laree McGuire	Testifying for Porter McGuire Kiakona, LLP	Support	Written Testimony Only

Comments:

Aloha,

I am a member of a working group that includes CAI LAC , Hawaii Council of Community Associations (HCCA), Hawaii State Association of Parliamentarians Legislative Committee ("HSAPLC"), and Associa Hawaii. We reviewed HB2272, HD1 and we support the Bill with amendments to section 4 as noted in an attachment.to the testimonies of both Jonathan Billings on behalf of CAI/LAC, Hawaii Chapter and Steve Glanstein on behalf of HSAPLC.

This working group met on several occasions to discuss the technological tools that were utilized as a result of COVID-19, including both remote meeting technology and internet based electronic election programs--both of which have benefitted the community association industry. We have seen significantly increased participation in association and board meetings via remote meeting technology and we are concerned that these benefits may disappear with the lifting of the Governor's emergency order. As such, I am writing in support of this Bill with the proposed amendments included therein and respectfully request that you pass it out of the Committee in its proposed form.

Mahalo for the opportunity to testify.

The Senate
Committee on Commerce and Consumer Protection
Friday, March 18, 2022
10:00 a.m.

To: Senator Rosalyn H. Baker, Chair
Re: HB2272 HD1, Relating to Condominium Associations

Aloha Chair Baker, Vice-Chair Chang, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups. We focus on policies and practices which can impact the well-being of seniors and our community.

I am also the leader of Hui 'Oia'i'o, informally known as "COCO," a coalition of over three hundred property owners--mostly seniors--from over 150 common-interest associations in Hawaii.

I offer the following comments on **HB2272 HD1**:

(1) Regarding Section 7. HRS514B-125, on page 12 of the pdf version of HB2272 HD1: please delete the phrase, "in lieu of notice," on line 19 this presumes that all owners have access to their association's website. Rather than lessen avenues of notification, the Committee should encourage enhanced means of communicating within associations.

(2) Re-insert what was deleted from HB2272 regarding Section 514B-148, except to change the terminology from "reserve specialist," which apparently is proprietary, to "reserve study preparer" as follows,

1. By amending subsection (a) to read:

"(a) The budget required under section 514B-144(a) shall include at least the following:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the association as of the date of the budget;
- (4) The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association; provided that the reserve study shall be performed by an independent, certified ~~reserve specialist~~ reserve study preparer, who shall not be affiliated with the managing agent of the

association; provided further that the reserve study shall be prepared or updated at least every three years;

(5) A general explanation of how the estimated replacement reserves are computed;

(6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves; and

(7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4)."

Mahalo for the opportunity to testify on this measure.

March 17, 2022

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
Committee Members
Committee on Commerce & Consumer Protection

RE: HB2272, HD1 - Support w/Amendments

Aloha Chair Baker, Vice Chair Chang and Committee Members:

Thank you for the opportunity to submit testimony. I am a member of the Community Associations Institute (CAI) Legislative Action Committee (LAC) Hawaii Chapter. CAI HawaiiLAC supports HB2272, HD1 with amendments to Section 4 of the proposed bill.

A working group that included CAI LAC, Hawaii Council of Community Associations (HCCA), Hawaii State Association of Parliamentarians Legislative Committee, and Associa reviewed HB2272, HD1 and support the bill with amendments to section 4 as found in the attachment.

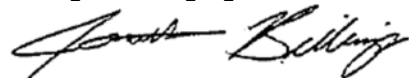
The working group of these three different entities met on several occasions to discuss the technological tools that were utilized as a result of COVID-19. Remote meeting technology and internet based electronic election programs have benefitted the community association industry.

Several benefits come with utilizing remote meeting technology and internet based electronic election programs such as increased owner participation, accessibility, efficiency, and decreased likelihood of human error. Utilizing these technologies post pandemic will provide continued opportunities for more owner participation and will ultimately improve the community association industry.

There are chances of abuse and fraud with these technologies. However, the proposed amendment to Section 4 found in the attached document will add safeguards to minimize abuse and fraud when utilizing these technologies.

The CAI LAC supports HB2272, HD1 with the proposed amendments to Section 4.

Very truly yours,



Jonathan Billings
CAI LAC

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

Proposed changes to HB2272 HD1 are identified in Red with a disclosure comment in the right margin. "track changes"

HB2272 HD1 SECTION 1 – changes proposed to HRS §514B-32(a):

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- (1) The land submitted to the condominium property regime;
- (2) The number of the condominium map filed concurrently with the declaration;
- (3) The number of units in the condominium property regime;
- (4) The unit number of each unit and common interest appurtenant to each unit;
- (5) The number of buildings and projects in the condominium property regime, and the number of stories and units in each building;
- (6) The permitted and prohibited uses of each unit;
- (7) To the extent not shown on the condominium map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical structures or, if a unit boundary is not defined by a physical structure, by spatial coordinates;
- (8) The condominium property regime's common elements;
- (9) The condominium property regime's limited common elements, if any, and the unit or units to which each limited common element is appurtenant;
- (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium property regime if it is damaged or destroyed;
- (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations set forth in paragraph (12), the ~~approval of the owners of~~ **declaration may be amended at any time by the vote or written consent of unit owners representing** at least sixty-seven per cent of the common interest ~~shall be required for all amendments to the declaration;~~ **unless the declaration is amended by the unit owners to require a higher percentage;**
- (12) Any rights that the developer or others reserve regarding the condominium property regime, including, without limitation, any development rights, and any reservations to modify the declaration or condominium map. An amendment to the declaration made pursuant to the exercise of those reserved rights shall require only the consent or approval, if any, specified in the reservation; and

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

(13) A declaration, subject to the penalties set forth in section 514B-69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5 and chapter 205, including section 205-4.6 where applicable. In the case of a project in the agricultural district classified pursuant to chapter 205, the declaration, subject to the penalties set forth in section 514B-69(b), shall include an additional statement that there are no private restrictions limiting or prohibiting agricultural uses or activities in compliance with section 205-4.6. In the case of a property that includes one or more existing structures being converted to condominium property regime status, the declaration required by this section shall specify:

(A) Any variances that have been granted to achieve the compliance; and

(B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming conditions, uses, or structures.

A property that is registered pursuant to section 514B-51 shall instead provide the required declaration pursuant to section 514B-54. If a developer is converting a structure to condominium property regime status and the structure is not in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5, and the developer intends to use purchaser's funds pursuant to the requirements of section 514B-92 or 514B-93 to cure the violation or violations, then the declaration required by this paragraph may be qualified to identify with specificity each violation and the requirement to cure the violation by a date certain.

(b) The declaration may contain any additional provisions that are not inconsistent with this chapter. [L 2005, c 93, pt of §2; am L 2006, c 38, §22 and c 273, §7; am L 2014, c 49, §4]

HB2272 HD1 SECTION 2– changes proposed to HRS §514B-83(a):

§514B-83 Developer's public report. (a) A developer's public report shall contain:

- (1) The name and address of the project, and the name, address, telephone number, and electronic mail address, if any, of the developer or the developer's agent;
- (2) A statement of the deadline, pursuant to section 514B-89, for completion of construction or, in the case of a conversion, for the completion of any repairs required to comply with section 514B-5, and the remedies available to the purchaser, including but not limited to cancellation of the sales contract, if the completion of construction or repairs does not occur on or before the completion deadline;
- (3) A breakdown of the annual maintenance fees, which includes the annual reserve contributions based on a reserve study, and the monthly estimated cost for each unit, certified to have been based on generally accepted accounting principles, and a statement regarding when a purchaser shall become obligated to start paying the fees pursuant to section 514B-41(b);

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- (4) A description of all warranties for the individual units and the common elements, including the date of initiation and expiration of any such warranties, or a statement that no warranties exist;
- (5) A summary of the permitted uses of the units and, if applicable, the number of units planned to be devoted to a particular use;
- (6) A description of any development rights reserved to the developer or others;
- (7) A declaration, subject to the penalties set forth in section 514B-69(b), that the project is in compliance with all county zoning and building ordinances and codes, chapter 205, including section 205-4.6 where applicable, and all other county permitting requirements applicable to the project, pursuant to sections 514B-5 and 514B-32(a)(13); and
- (8) Any other facts, documents, or information that would have a material impact on the use or value of a unit or any appurtenant limited common elements or amenities of the project available for an owner's use, or that may be required by the commission.

(b) A developer shall promptly amend the developer's public report to report any pertinent or material change or both in the information required by this section. [L 2005, c 93, pt of §4; am L 2014, c 49, §8]

HB2272 HD1 SECTION 3– changes proposed to HRS §514B-108(e):

§514B-108 Bylaws. (a) A true copy of the bylaws shall be recorded in the same manner as the declaration. No amendment to the bylaws is valid unless the amendment is duly recorded.

(b) The bylaws shall provide for at least the following:

- (1) The number of members of the board and the titles of the officers of the association;
- (2) Election by the board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;
- (3) The qualifications, powers and duties, terms of office, and manner of electing and removing directors and officers and the filling of vacancies;
- (4) Designation of the powers the board or officers may delegate to other persons or to a managing agent;
- (5) Designation of the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;
- (6) The compensation, if any, of the directors;
- (7) Subject to subsection (e), a method for amending the bylaws; and

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(8) The percentage, consistent with this chapter, that is required to adopt decisions binding on all unit owners; provided that votes allocated to lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar common areas not located inside units shall not be cast at any association meeting, regardless of their designation in the declaration.

(c) The bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

(d) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(e) The bylaws may be amended at any time by the vote or written consent of at least sixty-seven per cent of all unit owners. Any proposed bylaws together with the detailed rationale for the proposal may be submitted by the board or by a volunteer unit owners group. If submitted by that group, the proposal shall be accompanied by a petition signed **and dated** by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership. **The petition shall be valid only if submitted within one hundred twenty days of the earliest signature.** The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board. The vote or written consent, to be valid, must be obtained within three hundred sixty-five days after mailing for a proposed bylaw submitted by either the board or a volunteer unit owners group. If the bylaw is duly adopted, the board shall cause the bylaw amendment to be recorded. The volunteer unit owners group shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within three hundred sixty-five days after the original petition was submitted to the board.

This subsection shall not preclude any unit owner or volunteer unit owners group from proposing any bylaw amendment at any annual association meeting. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §18]

HB2272 HD1 SECTION 4– changes proposed to HRS §514B-121:

§514B-121 Association meetings. (a) A meeting of the association shall be held at least once each year.

(b) Notwithstanding any other provision of this chapter, except as provided in subsection (e), or the declaration or bylaws of a condominium to the contrary, at any association meeting the board may direct the use of an electronic voting device regardless of whether a secret ballot is used or required. Except as provided in subsection (e), the use shall be subject to the following:

- (1) The electronic voting device and all associated equipment shall be isolated from any connection to an external network, including the Internet, ~~or, as a permissible alternative, use a form of encryption comparable to that used for secured Internet web browsers~~.
- (2) The board shall establish reasonable procedures to provide for the secrecy and integrity of the unit owners' votes, including but not limited to procedures that ensure the availability of a printed audit trail containing:

Commented [SG1]: Proposed

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

(A) The reference number ~~or Internet address~~ of the electronic voting device;

(B) Each common interest voted; and

(C) The vote that was tabulated;

(3) A copy of the printed audit trail shall be available to owners after the meeting in the same manner provided by sections 514B-154 and 514B-154.5; and

(4) A copy of the procedures established pursuant to paragraph (2) shall be available at no charge to any owner and a copy shall be available at any meeting at which the association uses an electronic voting

Commented [SG2]: Proposed

~~In the event of~~ If any conflict arises between this subsection and subsection (e), subsection (e) shall control.

Commented [SG3]: Proposed.

(c) Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed **and dated** by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association's expense in accordance with the requirements of the bylaws and of this part; provided further that a special meeting based upon petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition. **The petition shall be valid only if submitted within one hundred twenty days of the earliest signature.**

(d) Not less than fourteen days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be:

(1) Hand-delivered;

(2) Sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner; or

(3) At the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner.

The notice of any meeting must state the date, time, and place of the meeting and the items on the agenda, including the general nature and rationale of any proposed amendment to the declaration or bylaws, and any proposal to remove a member of the board; provided that this subsection shall not preclude any unit owner from proposing an amendment to the declaration or bylaws or to remove a member of the board at any annual association meeting.

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

(e) All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Notwithstanding any provision to the contrary in the association's declaration or bylaws or in subsection (b), electronic meetings and electronic, machine, or mail voting ~~shall may~~ be authorized by the board of directors in its sole discretion;

Commented [SG4]: Proposed.

- (1) During any period in which a state of emergency or local state of emergency, declared pursuant to chapter 127A, is in effect in the county in which the condominium is located;
- (2) For any association meeting for which notice was given while a state of emergency or local state of emergency, declared pursuant to chapter 127A, was in effect for the county in which the condominium is located but is no longer in effect as of the date of the meeting; provided that the meeting is held within sixty days of the date the notice was first given; ~~[or]~~

(3) For any electronic, machine, or mail voting for which notice of voting has been sent while a state of emergency or local state of emergency, declared pursuant to chapter 127A, was in effect for the county in which the condominium is located but is no longer in effect as of the deadline for the electronic, machine, or mail voting; provided that the deadline is within sixty days of the date the notice was first sent:~~[or]~~

Commented [SG5]: Proposed

~~(4)~~~~(3)~~ Whenever otherwise authorized in an association's declaration or bylaws; ~~or~~

(5) Whenever approved in advance by (i) written consent of a majority of unit owners, or (ii) by majority vote at an association meeting;

Commented [SG6]: Proposed.

As used in this subsection, "mail voting" includes sending or receiving written ballots via mail, courier, or electronic transmission; provided that the transmission is a complete reproduction of the original.

(f) All association meetings shall be held at the address of the condominium or elsewhere within the State as determined by the board; provided that in the event of a natural disaster, such as a hurricane, an association meeting may be held outside the State. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2008, c 13, §1; am L 2019, c 14, §4; am L 2021, c 83 §2]

The association shall implement reasonable measures to verify that each person permitted to vote is a member of the association or proxy of a member.

Commented [SG7]: Proposed.

HB2272 HD1 SECTION 5– changes proposed to HRS §514B-122(a):

[§514B-122] Association meetings; minutes. (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.

HB2272 HD1 SECTION 6– changes proposed to HRS §514B-123(d):

(d) A proxy, to be valid, shall:

- (1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. Hawaii-Aleutian Standard Time on the second business day prior to the date of the meeting to which it pertains; and
- (2) Contain at least the name of the association, the date of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given.

HB2272 HD1 SECTION 7– changes proposed to HRS §514B-125(b):

(b) ~~Following any election of board members by the association, the~~ The board may ~~[, at the board's next regular meeting or at a duly noticed special meeting,]~~ establish rules for owner participation in any deliberation or discussion at board meetings, other than executive sessions. A board that establishes such rules pursuant to this subsection:

- (1) Shall notify all owners of these rules; and
- (2) May amend these rules at any regular or duly noticed special meeting of the board; provided that all owners shall be notified of any adopted amendments.

In lieu of notice, the board may make the rules available to owners on an association website.

HB2272 HD1 SECTION 8– changes proposed to HRS §514B-148(h):

(h) As used in this section:

“Capital expenditure” means an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year.

“Cash flow plan” means a minimum ~~[twenty-year]~~ thirty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that ~~[twenty-year]~~ thirty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that ~~[twenty-year]~~ thirty-year period, except in an emergency.

“Emergency situation” means any extraordinary expenses:

- (1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered;

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

- (3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;
- (4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or
- (5) Necessary for the association to obtain adequate insurance for the property which the association must insure.

“Major maintenance” means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.

“Replacement reserves” means funds for the upkeep, repair, or replacement of those parts of the property, including but not limited to roofs, walls, decks, paving, and equipment, that the association is obligated to maintain. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]



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

March 16, 2022

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Stanley Chang, Vice-Chair
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 230
415 South Beretania Street
Honolulu, HI 96813

**RE: Testimony in SUPPORT OF HB2272 HD1 with Amendments; Hearing Date:
March 18, 2022 at 10:00 a.m. Senate Conference room 229 and Zoom; sent via
Internet**

Aloha Chair Baker, Vice-Chair Chang, and Committee members,

Thank you for the opportunity to provide testimony on this bill. I have a prior obligation and may not be at the hearing in time to provide verbal testimony.

This testimony is presented in **SUPPORT OF HB2272 HD1 with amendments.**

HB2272 HD1 currently proposes to provide numerous clarifications and updates to various parts of Chapter 514B:

1. Clarifies the amendment to the declaration.
2. Mandates a reserve study to be included in the Developer's public report.
3. Clarifies that petitions must be dated; corrects abuse of multiple undated petitions.
4. Clarifies electronic, machine, or mail voting can also be done during a state or local state of emergency. Also clarifies the term, "mail voting."
5. Addresses approval of association meeting minutes when a board meets less often than every sixty days. Permits association to authorize board approval of association meeting minutes, regardless of how often the board meets. Still mandates availability of minutes.
6. Clarifies proxy deadline time is "Hawaii-Aleutian Standard Time."
7. Clarifies that the board doesn't have to adopt meeting rules every time there is an election. Permits the board to make board meeting rules available on an association website in lieu of sending notice to all owners.
8. Provides that a reserve study shall be performed by an independent, certified reserve specialist, who shall not be affiliated with the managing agent of the association. It also expands the "cash flow plan" from twenty to thirty years.

There's a movement to provide for electronic, mail, or machine voting. However, several stakeholders have had concerns about the potential for abuse and the need for a balanced approach.

We worked together with representatives of CAI, HCCA, and Associa to include a balanced process for electronic, machine, or mail voting.

The attached changes are a result of that collaboration. They include a restatement of the text of HB2272 HD1 with proposed changes for your consideration. The proposed changes to HB2272 HD1 are identified in “red” with comments.

We request that you pass the bill with the amendments herein.

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. Thank you for the opportunity to present this testimony.

Sincerely,

Steve Glanstein

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

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

Proposed changes to HB2272 HD1 are identified in Red with a disclosure comment in the right margin. "track changes"

HB2272 HD1 SECTION 1 – changes proposed to HRS §514B-32(a):

§514B-32 Contents of declaration. (a) A declaration shall describe or include the following:

- (1) The land submitted to the condominium property regime;
- (2) The number of the condominium map filed concurrently with the declaration;
- (3) The number of units in the condominium property regime;
- (4) The unit number of each unit and common interest appurtenant to each unit;
- (5) The number of buildings and projects in the condominium property regime, and the number of stories and units in each building;
- (6) The permitted and prohibited uses of each unit;
- (7) To the extent not shown on the condominium map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical structures or, if a unit boundary is not defined by a physical structure, by spatial coordinates;
- (8) The condominium property regime's common elements;
- (9) The condominium property regime's limited common elements, if any, and the unit or units to which each limited common element is appurtenant;
- (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium property regime if it is damaged or destroyed;
- (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations set forth in paragraph (12), the ~~approval of the owners of~~ **declaration may be amended at any time by the vote or written consent of unit owners representing** at least sixty-seven per cent of the common interest ~~shall be required for all amendments to the declaration;~~ **unless the declaration is amended by the unit owners to require a higher percentage;**
- (12) Any rights that the developer or others reserve regarding the condominium property regime, including, without limitation, any development rights, and any reservations to modify the declaration or condominium map. An amendment to the declaration made pursuant to the exercise of those reserved rights shall require only the consent or approval, if any, specified in the reservation; and

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

(13) A declaration, subject to the penalties set forth in section 514B-69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5 and chapter 205, including section 205-4.6 where applicable. In the case of a project in the agricultural district classified pursuant to chapter 205, the declaration, subject to the penalties set forth in section 514B-69(b), shall include an additional statement that there are no private restrictions limiting or prohibiting agricultural uses or activities in compliance with section 205-4.6. In the case of a property that includes one or more existing structures being converted to condominium property regime status, the declaration required by this section shall specify:

(A) Any variances that have been granted to achieve the compliance; and

(B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming conditions, uses, or structures.

A property that is registered pursuant to section 514B-51 shall instead provide the required declaration pursuant to section 514B-54. If a developer is converting a structure to condominium property regime status and the structure is not in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5, and the developer intends to use purchaser's funds pursuant to the requirements of section 514B-92 or 514B-93 to cure the violation or violations, then the declaration required by this paragraph may be qualified to identify with specificity each violation and the requirement to cure the violation by a date certain.

(b) The declaration may contain any additional provisions that are not inconsistent with this chapter. [L 2005, c 93, pt of §2; am L 2006, c 38, §22 and c 273, §7; am L 2014, c 49, §4]

HB2272 HD1 SECTION 2– changes proposed to HRS §514B-83(a):

§514B-83 Developer's public report. (a) A developer's public report shall contain:

- (1) The name and address of the project, and the name, address, telephone number, and electronic mail address, if any, of the developer or the developer's agent;
- (2) A statement of the deadline, pursuant to section 514B-89, for completion of construction or, in the case of a conversion, for the completion of any repairs required to comply with section 514B-5, and the remedies available to the purchaser, including but not limited to cancellation of the sales contract, if the completion of construction or repairs does not occur on or before the completion deadline;
- (3) A breakdown of the annual maintenance fees, which includes the annual reserve contributions based on a reserve study, and the monthly estimated cost for each unit, certified to have been based on generally accepted accounting principles, and a statement regarding when a purchaser shall become obligated to start paying the fees pursuant to section 514B-41(b);

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

- (4) A description of all warranties for the individual units and the common elements, including the date of initiation and expiration of any such warranties, or a statement that no warranties exist;
- (5) A summary of the permitted uses of the units and, if applicable, the number of units planned to be devoted to a particular use;
- (6) A description of any development rights reserved to the developer or others;
- (7) A declaration, subject to the penalties set forth in section 514B-69(b), that the project is in compliance with all county zoning and building ordinances and codes, chapter 205, including section 205-4.6 where applicable, and all other county permitting requirements applicable to the project, pursuant to sections 514B-5 and 514B-32(a)(13); and
- (8) Any other facts, documents, or information that would have a material impact on the use or value of a unit or any appurtenant limited common elements or amenities of the project available for an owner's use, or that may be required by the commission.

(b) A developer shall promptly amend the developer's public report to report any pertinent or material change or both in the information required by this section. [L 2005, c 93, pt of §4; am L 2014, c 49, §8]

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§514B-108 Bylaws. (a) A true copy of the bylaws shall be recorded in the same manner as the declaration. No amendment to the bylaws is valid unless the amendment is duly recorded.

(b) The bylaws shall provide for at least the following:

- (1) The number of members of the board and the titles of the officers of the association;
- (2) Election by the board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;
- (3) The qualifications, powers and duties, terms of office, and manner of electing and removing directors and officers and the filling of vacancies;
- (4) Designation of the powers the board or officers may delegate to other persons or to a managing agent;
- (5) Designation of the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;
- (6) The compensation, if any, of the directors;
- (7) Subject to subsection (e), a method for amending the bylaws; and

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

(8) The percentage, consistent with this chapter, that is required to adopt decisions binding on all unit owners; provided that votes allocated to lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar common areas not located inside units shall not be cast at any association meeting, regardless of their designation in the declaration.

(c) The bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

(d) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(e) The bylaws may be amended at any time by the vote or written consent of at least sixty-seven per cent of all unit owners. Any proposed bylaws together with the detailed rationale for the proposal may be submitted by the board or by a volunteer unit owners group. If submitted by that group, the proposal shall be accompanied by a petition signed **and dated** by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership. **The petition shall be valid only if submitted within one hundred twenty days of the earliest signature.** The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board. The vote or written consent, to be valid, must be obtained within three hundred sixty-five days after mailing for a proposed bylaw submitted by either the board or a volunteer unit owners group. If the bylaw is duly adopted, the board shall cause the bylaw amendment to be recorded. The volunteer unit owners group shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within three hundred sixty-five days after the original petition was submitted to the board.

This subsection shall not preclude any unit owner or volunteer unit owners group from proposing any bylaw amendment at any annual association meeting. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2006, c 273, §18]

HB2272 HD1 SECTION 4– changes proposed to HRS §514B-121:

§514B-121 Association meetings. (a) A meeting of the association shall be held at least once each year.

(b) Notwithstanding any other provision of this chapter, except as provided in subsection (e), or the declaration or bylaws of a condominium to the contrary, at any association meeting the board may direct the use of an electronic voting device regardless of whether a secret ballot is used or required. Except as provided in subsection (e), the use shall be subject to the following:

- (1) The electronic voting device and all associated equipment shall be isolated from any connection to an external network, including the Internet, **or, as a permissible alternative, use a form of encryption comparable to that used for secured Internet web browsers**.
- (2) The board shall establish reasonable procedures to provide for the secrecy and integrity of the unit owners' votes, including but not limited to procedures that ensure the availability of a printed audit trail containing:

Commented [SG1]: Proposed

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

(A) The reference number ~~or Internet address~~ of the electronic voting device;

(B) Each common interest voted; and

(C) The vote that was tabulated;

(3) A copy of the printed audit trail shall be available to owners after the meeting in the same manner provided by sections 514B-154 and 514B-154.5; and

(4) A copy of the procedures established pursuant to paragraph (2) shall be available at no charge to any owner and a copy shall be available at any meeting at which the association uses an electronic voting

Commented [SG2]: Proposed

~~In the event of~~ If any conflict arises between this subsection and subsection (e), subsection (e) shall control.

Commented [SG3]: Proposed.

(c) Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed **and dated** by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association's expense in accordance with the requirements of the bylaws and of this part; provided further that a special meeting based upon petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition. **The petition shall be valid only if submitted within one hundred twenty days of the earliest signature.**

(d) Not less than fourteen days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be:

(1) Hand-delivered;

(2) Sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner; or

(3) At the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner.

The notice of any meeting must state the date, time, and place of the meeting and the items on the agenda, including the general nature and rationale of any proposed amendment to the declaration or bylaws, and any proposal to remove a member of the board; provided that this subsection shall not preclude any unit owner from proposing an amendment to the declaration or bylaws or to remove a member of the board at any annual association meeting.

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

(e) All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Notwithstanding any provision to the contrary in the association's declaration or bylaws or in subsection (b), electronic meetings and electronic, machine, or mail voting ~~shall may~~ be authorized by the board of directors in its sole discretion;

Commented [SG4]: Proposed.

- (1) During any period in which a state of emergency or local state of emergency, declared pursuant to chapter 127A, is in effect in the county in which the condominium is located;
- (2) For any association meeting for which notice was given while a state of emergency or local state of emergency, declared pursuant to chapter 127A, was in effect for the county in which the condominium is located but is no longer in effect as of the date of the meeting; provided that the meeting is held within sixty days of the date the notice was first given; ~~[or]~~

(3) For any electronic, machine, or mail voting for which notice of voting has been sent while a state of emergency or local state of emergency, declared pursuant to chapter 127A, was in effect for the county in which the condominium is located but is no longer in effect as of the deadline for the electronic, machine, or mail voting; provided that the deadline is within sixty days of the date the notice was first sent:~~[or]~~

Commented [SG5]: Proposed

~~(4)~~~~(3)~~ Whenever otherwise authorized in an association's declaration or bylaws; ~~or~~

(5) Whenever approved in advance by (i) written consent of a majority of unit owners, or (ii) by majority vote at an association meeting;

Commented [SG6]: Proposed.

As used in this subsection, "mail voting" includes sending or receiving written ballots via mail, courier, or electronic transmission; provided that the transmission is a complete reproduction of the original.

(f) All association meetings shall be held at the address of the condominium or elsewhere within the State as determined by the board; provided that in the event of a natural disaster, such as a hurricane, an association meeting may be held outside the State. [L 2004, c 164, pt of §2; am L 2005, c 93, §7; am L 2008, c 13, §1; am L 2019, c 14, §4; am L 2021, c 83 §2]

The association shall implement reasonable measures to verify that each person permitted to vote is a member of the association or proxy of a member.

Commented [SG7]: Proposed.

HB2272 HD1 SECTION 5– changes proposed to HRS §514B-122(a):

[§514B-122] Association meetings; minutes. (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.

HB2272 HD1 SECTION 6– changes proposed to HRS §514B-123(d):

(d) A proxy, to be valid, shall:

- (1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. Hawaii-Aleutian Standard Time on the second business day prior to the date of the meeting to which it pertains; and
- (2) Contain at least the name of the association, the date of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given.

HB2272 HD1 SECTION 7– changes proposed to HRS §514B-125(b):

(b) ~~Following any election of board members by the association, the~~ The board may ~~[, at the board's next regular meeting or at a duly noticed special meeting,]~~ establish rules for owner participation in any deliberation or discussion at board meetings, other than executive sessions. A board that establishes such rules pursuant to this subsection:

- (1) Shall notify all owners of these rules; and
- (2) May amend these rules at any regular or duly noticed special meeting of the board; provided that all owners shall be notified of any adopted amendments.

In lieu of notice, the board may make the rules available to owners on an association website.

HB2272 HD1 SECTION 8– changes proposed to HRS §514B-148(h):

(h) As used in this section:

“Capital expenditure” means an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year.

“Cash flow plan” means a minimum ~~[twenty-year]~~ thirty-year projection of an association's future income and expense requirements to fund fully its replacement reserves requirements each year during that ~~[twenty-year]~~ thirty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that ~~[twenty-year]~~ thirty-year period, except in an emergency.

“Emergency situation” means any extraordinary expenses:

- (1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered;

Proposed HB2272 HD1 SD1 (Consolidated Wording) with proposed changes in Red and Commented

- (3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;
- (4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or
- (5) Necessary for the association to obtain adequate insurance for the property which the association must insure.

“Major maintenance” means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.

“Replacement reserves” means funds for the upkeep, repair, or replacement of those parts of the property, including but not limited to roofs, walls, decks, paving, and equipment, that the association is obligated to maintain. [L 2004, c 164, pt of §2; am L 2005, c 93, §7]

HB-2272-HD-1

Submitted on: 3/17/2022 9:08:22 AM

Testimony for CPN on 3/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Chandra Kanemaru	Testifying for CCV2 Board	Support	Written Testimony Only

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I support portions of H.B. 2272, H.D.1.

Section 1.

I support Section 1. The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 2.

I support Section 2. This section will require developers to include in the public report a breakdown of the annual maintenance fees which includes the annual reserve contributions based on a reserve study.

Section 3.

I support Section 3 which provides that petitions submitted by owners to amend the bylaws are valid only if submitted within 120 days of the earliest signature.

1. 4.

I support Section 4 which provides that petitions submitted by owners for special meetings are valid only if submitted within 120 days of the earliest signature.

I support the intent of the change to HRS Section 514B-121(e)(3), but suggest that a definition of “notice of voting” be added. Otherwise, there will be confusion as to what constitutes a notice of voting.

Section 5.

I support the change in Section 5 which eliminates the requirement that boards approve minutes of meetings of the association within sixty days after the meeting. Some boards meet only quarterly, so the sixty-day requirement is not workable.

Section 6.

1. support the insertion of Hawaii-Aleutian Standard Time, but don't really know that it is necessary.

Section 7.

I support Section 7 which allows the board to establish standing rules for owner participation.

Section 8.

I take no position on Section 8.

Respectfully submitted,

Chandra Kanemaru

March 17, 2022

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
Members of the Senate Committee on
Commerce & Consumer Protection
Thirtieth First Legislature
Regular Session, 2022

LATE

Re: H.B. 2272, H.D.1
Hearing on March 18, 2022, 10:00 a.m.
Conference Room 229

Dear Chair, Vice Chair and Members of the Committee:

My name is Charles Pear. I am testifying as legislative counsel for ARDA Hawaii.

ARDA Hawaii opposes H.B. 2272, H.D.1., in its current form.

Section 514B-32(a)(11) currently requires that a condominium declaration state:

The total percentage of the common interest, and any other approvals or consents,
that are required to amend the declaration. [Emphasis added.]

The underlined language authorizes condominium documents to require that certain amendments be approved not just by a vote of the owners but also by someone having a more particular interest in the subject of the amendment.

For example, in a mixed use project containing both commercial and residential units, the documents may contain provisions for the benefit of the commercial units. This might take the form of an authorization to post a sign showing the location of a commercial unit used as a restaurant.

In such a case, the condominium declaration might provide that the condominium documents cannot be amended to terminate this right without the consent of the owner of the commercial unit. This consent requirement would be established pursuant to the underlined language quoted above.

Condominium documents routinely grant consent rights to certain owners or classes of owners (e.g., commercial unit owners), lenders financing the purchase of units, lessors in the case of leasehold projects, and, in nearly all projects, the developer.

In many cases, the condominium documents also provide that such provisions cannot be amended without the approval or consent of the party holding such approval or consent right (e.g., the commercial unit owners, lenders, lessors, or developer).

Section 514B-32(a)(11) currently also provides that the condominium documents may be amended with the approval of the owners of at least 67% of the common interests. This language does not, however, relieve the association of the obligation to obtain any consents or approvals of affected owners, lenders, lessors or the developer. It merely establishes the minimum vote of owners required for an amendment *in addition to any approvals or consents*.

H.B. 2272, H.D.1., in its current form, may be construed to change that. It provides that owners of 67% of the common interests have the right to amend the condominium declaration. It makes no mention of also requiring the consent or approval of others.

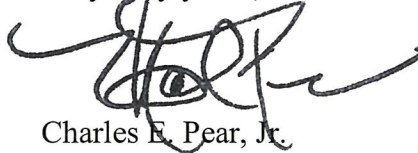
In its current form, the changes contained in H.B. 2272, H.D.1. could authorize the association to amend the declaration to terminate the rights of the developer, commercial unit owners, other classes of unit owners, lessors and/or lenders.

To avoid this, we suggest that the proposed change to Section 514B-32(a)(11) be amended along the following lines (our proposed changes are shown in bold font):

(11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. **Subject to any such required approvals or consents, and except [Except]** as otherwise specifically provided in this chapter, and except **also** for any amendments made pursuant to reservations set forth in paragraph (12), the ~~[approval of the owners of]~~ **declaration may be amended at any time by the vote or written consent of unit owners representing at least sixty-seven per cent of the common interest [shall be required for all amendments to the declaration;]**, unless the declaration is amended by the unit owners to require a higher percentage;

Thank you for your kind consideration of these thoughts.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Charles E. Pear, Jr.', with a stylized flourish extending to the right.

Charles E. Pear, Jr.

CEP:kn

HB-2272-HD-1

Submitted on: 3/15/2022 10:47:38 AM

Testimony for CPN on 3/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

As an owner occupant and board member of a high rise condo, I support of this bill. However, I ask that the following amendments be made:

Page 12, delete lines 19 to 20, regarding rules being on associaiton website in lieu of notice. There are many owners, especially seniors, who do not possess smart phones, computers, lap tops, etc. and thus will not be able to access websites. The language in lines 19 and 20 disenfranchises them. In my building, we have to post notices in the lobby and, depending on the subject matter, also distribute them to each unit.

I fully support that the cash flow plan be changed from 20 to 30 years. Many years ago we brought in an investment advisor who was matching our planned expenditures with maturity dates. He told us that twenty years was too short as some items won't show up that fast and once the initial study is done all properties and specialists do is follow the categories without adding new ones. He talked about 20 years projection that never considered salt water erosion and damage in coastal areas, especially in California and Florida, and 30 years out there was a problem and it had not be accounted for in the reserve study.

Lastly, I object to the use of defective effective dates and find that they do not serve to encourage future discussion, they are a cop out, and often end in the defeat of a bill during conference committee. The effective date should be changed to effective upon approval, as it appeared in the original bill, and not some date 28 years in the future when a good number of us will be dead. This bill clears up a lot of confusion in condo laws and needs to be passed now, with an effective date saying upon approval.

Thank you for the opportunity to testify.

HB-2272-HD-1

Submitted on: 3/16/2022 6:11:42 PM

Testimony for CPN on 3/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Jeff Sadino	Individual	Comments	Written Testimony Only

Comments:

I am offering **COMMENTS** only for HB2272 HD1.

In Section 4 on pages 9 -10, the amendment should allow for remote voting at all times, not just during a state of emergency. Many Associations are only partly owner-occupied. Just because an Owner does not live on property does not mean that their ability to vote on issues as they come up should be curtailed.

In Section 7, I have concerns about the Board being able to establish rules that limit Owner participation during Board Meetings. Even though 514B-125(a) states that Owners "...shall be permitted to participate in any deliberation or discussion...", I have frequently been told that I cannot participate in topics being discussed during the Open Session. Section 7 should repeat the clause from 125(a). Owners should not be restricted from participating in Board Meetings without good cause for excessive disruption, etc.

In Section 8, the previous amendment to 514B-148(a)(4) requiring the reserve study to be completed by a person not affiliated with the managing agent has been removed from the current version. I oppose this removal because the managing agents typically have poor financial skills, surprisingly. As an example, our managing agent literally forgot to pay for our photovoltaic loan for the past 3.5 years. This totaled about \$75,000 that our managing agent just lost track of and forgot to pay. This is one example of many times our managing agent has been incompetent with our finances. The reserve study should be completed by an independent person who has no temptation in providing cover for the managing agent.

Thank you for the opportunity to testify,

Jeff Sadino

RE: Committee on Commerce and Consumer Protection

March 18, 2022

HB-2272-HD-1

Submitted on: 3/17/2022 8:08:11 AM

Testimony for CPN on 3/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Philip Nerney	Individual	Comments	Written Testimony Only

Comments:

Support with amendments suggested by CAI.

HB-2272-HD-1

Submitted on: 3/17/2022 8:14:35 AM

Testimony for CPN on 3/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Anne Anderson	Individual	Support	Written Testimony Only

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I support portions of H.B. 2272, H.D.1.

Section 1.

I support Section 1. The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

Section 2.

I support Section 2. This section will require developers to include in the public report a breakdown of the annual maintenance fees which includes the annual reserve contributions based on a reserve study.

Section 3.

I support Section 3 which provides that petitions submitted by owners to amend the bylaws are valid only if submitted within 120 days of the earliest signature.

Section 4.

I support Section 4 which provides that petitions submitted by owners for special meetings are valid only if submitted within 120 days of the earliest signature.

I support the intent of the change to HRS Section 514B-121(e)(3), but suggest that a definition of “notice of voting” be added. Otherwise, there will be confusion as to what constitutes a notice of voting.

Section 5.

I support the change in Section 5 which eliminates the requirement that boards approve minutes of meetings of the association within sixty days after the meeting. Some boards meet only quarterly, so the sixty-day requirement is not workable.

Section 6.

I support the insertion of Hawaii-Aleutian Standard Time, but don't really know that it is necessary.

Section 7.

I support Section 7 which allows the board to establish standing rules for owner participation.

Section 8.

I take no position on Section 8.

Respectfully submitted,

M. Anne Anderson

HB-2272-HD-1

Submitted on: 3/17/2022 8:18:41 AM

Testimony for CPN on 3/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Lance S. Fujisaki	Individual	Support	Written Testimony Only

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I support portions of H.B. 2272, H.D.1.

Section 1.

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Section 7.

I support Section 7 which allows the board to establish standing rules for owner participation.

Section 8.

I take no position on Section 8.

Respectfully submitted,

Lance Fujisaki

HB-2272-HD-1

Submitted on: 3/17/2022 9:19:24 AM

Testimony for CPN on 3/18/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Paul A. Ireland Koftinow	Individual	Comments	Written Testimony Only

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I support portions of H.B. 2272, H.D.1.

Section 1.

I support Section 1. The proposed amendment to HRS Section 514B-32(a)(11) will clarify that, except as stated in Section 514B-32(a)(11), all condominiums may amend their declarations by the vote or written consent of owners representing at least sixty-seven percent of the common interest, unless their declarations are amended by the unit owners to require a higher percentage. This will eliminate any confusion regarding the application of this section now that HRS Chapter 514A has been repealed.

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I support the change in Section 5 which eliminates the requirement that boards approve minutes of meetings of the association within sixty days after the meeting. Some boards meet only quarterly, so the sixty-day requirement is not workable.

Section 6.

I support the insertion of Hawaii-Aleutian Standard Time, although it may not be necessary.

Section 7.

I support Section 7 which allows the board to establish standing rules for owner participation.

Section 8.

I take no position on Section 8.

Respectfully submitted,

Paul A. Ireland Koftinow