



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

February 24, 2022

Honorable Senator Karl Rhoads, Chair
Honorable Senator Jarrett Keohokalole, Vice Chair
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in SUPPORT OF SB2685 SD1; Hearing Date: March 1, 2022 at 9:30 a.m. Videoconference via Zoom; sent via Internet

Aloha Chair Karl Rhoads, Vice-Chair Jarrett Keohokalole, 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.

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 2,000 meetings in 39 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 governing documents and meetings of numerous condominiums, cooperatives, and Planned Community Associations.

This testimony is presented in **SUPPORT OF SB2685 SD1**.

The bill contains much of the same information as 2020 HB2563 HD1 SD1¹ approved by the 2020 Consumer Protection and Health Committee. Progress on the 2020 bill was halted due to the COVID-19 shutdown.²

¹ Internet link: [2020 HB2563 HD1 SD1](#)

²The original 2020 bill was approved through the work and support of the Hawaii State Association of Parliamentarians; Hawaii Chapter of the Community Associations Institute; Associa; Law Offices of Mark K. McKellar, LLC; and several stakeholders.

The current bill has now been improved greatly with input from additional stakeholders.

We appreciate the efforts of the Senate Committee on Commerce and Consumer Protection in making the necessary updates for SB2685 SD1.

We request that you pass the 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. Thank you for the opportunity to present this testimony.

Sincerely,

Steve Glanstein

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



February 25, 2022

VIA WEB TRANSMITTAL

Hearing Date: Tuesday, March 1, 2022

Time: 9:30 a.m.

Place: Via Videoconference

Senator Karl Rhoads, Chair

Senator Jarrett Keohokaloli, Vice-Chair

Senate Committee on Judiciary

Re: Hawaii Chapter, Community Associations Institute's
Testimony in support of SB 2685 with amendments

Dear Chair Rhoads, Vice-Chair Keohokaloli and Committee members:

I am the Chair of the Legislative Action Committee of the Community Associations Institute, Hawaii Chapter ("CAI-LAC"). We represent the condominium and community association industry and submit this testimony in support of SB 2685, with amendments, as addressed in the testimony to be submitted by Steve Glanstein, the Chair of the Hawaii State Association of Parliamentarians, to this Committee prior to the March 1, 2022 hearing.

Based on the foregoing, and my prior direct conversations with Steve Glanstein regarding SB 2685, we respectfully submit that SB 2685 should be passed out of Committee with amendments. Thank you for your time and consideration.

Sincerely yours,

/s/ R. Laree McGuire

R Laree McGuire

CAI LAC Hawaii

SB-2685-SD-1

Submitted on: 2/26/2022 5:25:33 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jane Sugimura	Testifying for Hawaii Council for Assoc. of Apt. Owners	Support	No

Comments:

Hawaii Council supports SB2685 SD1 and urges the Committee to pass out the bill. We join in the testimony in support submitted by Steve Glanstein of the Hawaii State Association of Parliamentarians. Thank you for allowing me to testify on this bill.

SB-2685-SD-1

Submitted on: 2/28/2022 9:25:17 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Primrose	Testifying for Lualualei 1 Association	Support	No

Comments:

Dear Senator Rhoads, Chair, Senator Keohokalole, Vice Chair, and Members of the Committee on Judiciary:

I support S.B. 2685, S.D.1., but urge the Committee to make two important changes.

S.B. 2685, S.D.1 is an improved version of a 2020 bill that was progressing along before progress was halted due to the COVID-19 shutdown. However, it needs further changes. The phrase “should be assumed” was changed to “may be assumed” in HRS Section 421J-B(g) and HRS Section 414D-138(f) in S.D.1. These phrases should be changed back to “should be assumed.”

The point of HRS Section 421J-B(g) and HRS Section 414D-138(f) is to provide certainty when computing whether a director is protected from removal under specific sections. The phrase “should be assumed” clarifies what assumption is to be made. The phrase “may be assumed” offers little clarification, but instead opens the door for different assumptions or no assumptions. This will most certainly lead to conflicts and disputes. Accordingly, I urge the committee to restore the phrase “should be assumed” in HRS Sections 421J-B(g) and HRS Section 414D-138(f).

Respectfully submitted,

Primrose Leong-Nakamoto

SB-2685-SD-1

Submitted on: 2/28/2022 9:27:15 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Laurence Sussman	Testifying for Villages of Kapolei Association	Support	No

Comments:

Dear Senator Rhoads, Chair, Senator Keohokalole, Vice Chair, and Members of the Committee on Judiciary:

I support S.B. 2685, S.D.1., but urge the Committee to make two important changes.

1. 2685, S.D.1 is an improved version of a 2020 bill that was progressing along before progress was halted due to the COVID-19 shutdown. However, it needs further changes. The phrase “should be assumed” was changed to “may be assumed” in HRS Section 421J-B(g) and HRS Section 414D-138(f) in S.D.1. These phrases should be changed back to “should be assumed.”
1. point of HRS Section 421J-B(g) and HRS Section 414D-138(f) is to provide certainty when computing whether a director is protected from removal under specific sections. The phrase “should be assumed” clarifies what assumption is to be made. The phrase “may be assumed” offers little clarification, but instead opens the door for different assumptions or no assumptions. This will most certainly lead to conflicts and disputes. Accordingly, I urge the committee to restore the phrase “should be assumed” in HRS Sections 421J-B(g) and HRS Section 414D-138(f).

Respectfully submitted,

Laurence Sussman

SB-2685-SD-1

Submitted on: 2/28/2022 9:26:22 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mark McKellar	Testifying for Law Offices of Mark K. McKellar, LLC	Support	No

Comments:

Dear Senator Rhoads, Chair, Senator Keohokalole, Vice Chair, and Members of the Committee on Judiciary:

I support S.B. 2685, S.D.1., but urge the Committee to make two important changes.

S.B. 2685, S.D.1 is an improved version of a 2020 bill that was progressing along before progress was halted due to the COVID-19 shutdown. However, it needs further changes. The phrase “should be assumed” was changed to “may be assumed” in HRS Section 421J-B(g) and HRS Section 414D-138(f) in S.D.1. These phrases should be changed back to “should be assumed.”

The point of HRS Section 421J-B(g) and HRS Section 414D-138(f) is to provide certainty when computing whether a director is protected from removal under specific sections. The phrase “should be assumed” clarifies what assumption is to be made. The phrase “may be assumed” offers little clarification, but instead opens the door for different assumptions or no assumptions. This will most certainly lead to conflicts and disputes. Accordingly, I urge the committee to restore the phrase “should be assumed” in HRS Sections 421J-B(g) and HRS Section 414D-138(f).

Respectfully submitted,

Mark McKellar

SB-2685-SD-1

Submitted on: 2/25/2022 11:15:32 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Richard Emery	Testifying for Associa	Support	No

Comments:

We support the Bill.

SB-2685-SD-1

Submitted on: 2/24/2022 8:47:23 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jeff Sadino	Individual	Comments	No

Comments:

I am offering **COMMENTS** on SB2685 SD1.

I do not take a position on cumulative voting. I write because the current voting structure is poorly understood. Between proxy “as a whole”, proxy “in equal parts”, and cumulative voting, members of a Community Association often are not fully aware of how their vote actually works.

If I understand the motivation behind this Bill correctly, cumulative voting creates situations where a person can get elected to the Board during the main election. At subsequent meetings, after the election dynamics have changed, they can easily be removed by the majority of the Board. These second- and third-order scenarios are complicated scenarios for the average voter to understand.

After every Association election I have participated in, at least one Owner will express confusion over how the vote was calculated (even without cumulative voting). This lack of understanding also exists at the Managing Agents. I have an email thread over 20 emails long where the Managing Agent was unable to explain how the vote percentages were determined.

I ask that better explanations or examples be provided to Owners for how voting works, including during the actual meeting itself. I also ask that voting be allowed to be done remotely so that an Owner does not have to be physically present to vote, a significant challenge for our island community.

Thank you,

Jeff Sadino

JDC Hearing, March 1, 2022

SB-2685-SD-1

Submitted on: 2/26/2022 6:09:43 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Anne Anderson	Individual	Support	No

Comments:

Dear Senator Rhoads, Chair, Senator Keohokalole, Vice Chair, and Members of the Committee on Judiciary:

I support S.B. 2685, S.D.1., but urge the Committee to make two important changes.

S.B. 2685, S.D.1 is an improved version of a 2020 bill that was progressing along before progress was halted due to the COVID-19 shutdown. However, it needs further changes. The phrase “should be assumed” was changed to “may be assumed” in HRS Section 421J-B(g) and HRS Section 414D-138(f) in S.D.1. These phrases should be changed back to “should be assumed.”

The point of HRS Section 421J-B(g) and HRS Section 414D-138(f) is to provide certainty when computing whether a director is protected from removal under specific sections. The phrase “should be assumed” clarifies what assumption is to be made. The phrase “may be assumed” offers little clarification, but instead opens the door for different assumptions or no assumptions. This will most certainly lead to conflicts and disputes. Accordingly, I urge the committee to restore the phrase “should be assumed” in HRS Sections 421J-B(g) and HRS Section 414D-138(f).

Respectfully submitted,

M. Anne Anderson

SB-2685-SD-1

Submitted on: 2/26/2022 10:57:13 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Julie Wassel	Individual	Support	No

Comments:

Dear Senator Rhoads, Chair, Senator Keohokalole, Vice Chair, and Members of the Committee on Judiciary:

I support S.B. 2685, S.D.1., but urge the Committee to make two important changes.

S.B. 2685, S.D.1 is an improved version of a 2020 bill that was progressing along before progress was halted due to the COVID-19 shutdown. However, it needs further changes. The phrase “should be assumed” was changed to “may be assumed” in HRS Section 421J-B(g) and HRS Section 414D-138(f) in S.D.1. These phrases should be changed back to “should be assumed.”

The point of HRS Section 421J-B(g) and HRS Section 414D-138(f) is to provide certainty when computing whether a director is protected from removal under specific sections. The phrase “should be assumed” clarifies what assumption is to be made. The phrase “may be assumed” offers little clarification, but instead opens the door for different assumptions or no assumptions. This will most certainly lead to conflicts and disputes. Accordingly, I urge the committee to restore the phrase “should be assumed” in HRS Sections 421J-B(g) and HRS Section 414D-138(f).

Respectfully submitted,

Julie Wassel

SB-2685-SD-1

Submitted on: 2/27/2022 4:52:28 PM

Testimony for JDC on 3/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Carol Walker	Individual	Comments	No

Comments:

Dear Senator Rhoads, Chair, Senator Keohokalole, Vice Chair, and Members of the Committee on Judiciary:

I support S.B. 2685, S.D.1., but urge the Committee to make two important changes.

1. 2685, S.D.1 is an improved version of a 2020 bill that was progressing along before progress was halted due to the COVID-19 shutdown. However, it needs further changes. The phrase “should be assumed” was changed to “may be assumed” in HRS Section 421J-B(g) and HRS Section 414D-138(f) in S.D.1. These phrases should be changed back to “should be assumed.”
1. point of HRS Section 421J-B(g) and HRS Section 414D-138(f) is to provide certainty when computing whether a director is protected from removal under specific sections. The phrase “should be assumed” clarifies what assumption is to be made. The phrase “may be assumed” offers little clarification, but instead opens the door for different assumptions or no assumptions. This will most certainly lead to conflicts and disputes. Accordingly, I urge the committee to restore the phrase “should be assumed” in HRS Sections 421J-B(g) and HRS Section 414D-138(f).

Respectfully submitted,

Carol Walker

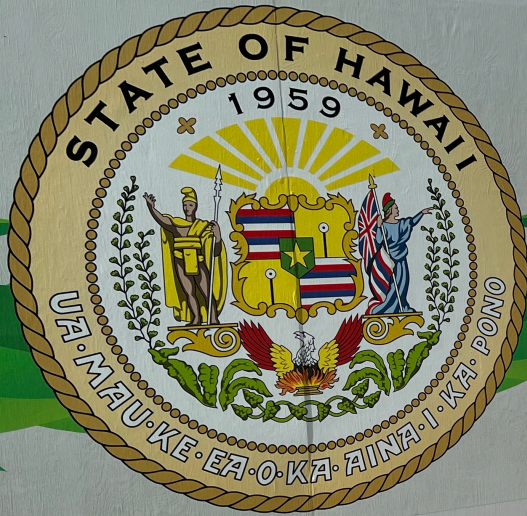
Dale A. Head
1637 Ala Mahina Place
Honolulu, HI 96819
(808) 836-1016 Home (808) 228-8508 Cell/Text
[dale.head@aol.com] Monday 27 February 2022

Hawaii Senate Committee on Judiciary - Honorable Chair Karl Rhoads, Vice Chair Jarrett Keojokalole, Laura Acasio, Mike Gabbard, Donna Mercado Kim, Chris Lee, and, Kurt FDavella

Regarding SB2685 SD1

1. For this particular Bill I respectfully **Oppose** it, as, Cumulative Voting is not something owners put into their ByLaws. Those documents are written by Developers when they form Home Owners Associations (HOAs) utilizing a rather common set of Model ByLaws. Essentially, the document is written to protect the interests of Developers, not necessarily future buyers of the project they are constructing. And as buyers, for instance of condominiums, the Developer does not provide a copy of them until **after** the purchase. Which means, from a Consumer Perspective, it is rather equivalent to signing a blank contract. Not so smart.
2. Such ByLaws usually omit providing 'reasonable accommodation' for an owner to cast their own vote if they cannot attend a meeting in person. No mention of 'Due Process', or, a definition of Voting Rights. While mention is made of removing a Board member or more, to include an entire Board of Directors, that is left up to the members. Giving power to a majority of Board members to remove someone with a minority viewpoint means there cannot be free discussion without worrying about retaliation.
3. I resided in a condominium complex for **34 years and 10 months**. It was my observation with three different management companies that they could not resist manipulating election outcomes through clever abuse of Proxies from absentee owners. This normally means with a simple majority of Board members preferred by the Property Manger being seated, even when they enter the meeting as 2nd or 3rd place candidates based on owners support, he determines the Board majority. Yes, that is known as a 'Puppet Board'. I speak here from my own experience, and when discussing this type of nonsense with owners from other condominium complexes, they too have had the same problems. So, therefore it is not uncommon, but scope of it cannot be ascertained without a neutral Task Force to investigate noncompliance with commonly expected ethics. I can tell you exactly where to look for 'evidence'. Examine Official Minutes and Election Certificates. They should list how many Proxies were assigned to 'the Board' and to whom were those vote(s) bestowed upon. Such information is never there. For perspective -
4. When I walked into an Annual Meeting in 2015, the fellow just in front of me was handed a list which showed he received **10** Proxies from absentee owners (investors). I was given a list with **63**. About a month later, at a Board meeting, he announced, "**Dale Head gets too many Proxies, we have to do something about that**"! Due to highly suspicious election outcomes over time, I audited election materials in **2018** and **2019**. The number assigned to me for those two years were first **44** and then **74**. The fellow who complained about owners giving me their support, received **7** and **1**. Under sham Cumulative Voting by the Property Manager, an Election Certificate was signed by 'Tellers' showing I got **48%** to **49%** for the guy with only **1** Proxy. As we had just **47** owners present at that particular meeting, this was a fraudulent election. It became an 'annual ritual'. The Tellers saw only about **10%** of owners casting ballots. Due to unstoppable election corruption, and 'Robber Baron' fees increases, I sold my place on 17 September 2021. Legislative efforts to micromanage condos with an ever expanding HRS514b are not working, basically because most HOA units are investor owned and they are blocked from voting, per HRS514b-123, which was passed in 2005. As the statute is not enforced by the state, it is essentially voluntary, which is an invitation to mischief. This has a direct effect on skyrocketing rents and super heated housing prices. Very shortsighted. The claim of 'self government' is untrue.
5. Going with Ranked Choice Voting with the top positions going to those who receive the most owners votes, and casting their own ballots, would cure this corruption, in my opinion. Oh, but that would be democratic. The companies lobby business group would scream very loudly to oppose that. Hint - They are not the Stakeholders, HOA members are.
- 6..Please vote this **SB2685** down as it is merely a tool meant to control HOA Board of Directors. Try respecting instead the owners, who are taxpayers.

Respectfully, **Dale A. Head**



Auwe !!
Voting Rights
Suppression

HRS 514b-123
UNFAIR!!!

SB-2685-SD-1

Submitted on: 2/28/2022 7:01:09 AM

Testimony for JDC on 3/1/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lance S. Fujisaki	Individual	Support	No

Comments:

Dear Senator Rhoads, Chair, Senator Keohokalole, Vice Chair, and Members of the Committee on Judiciary:

I support S.B. 2685, S.D.1., but urge the Committee to make two important changes.

S.B. 2685, S.D.1 is an improved version of a 2020 bill that was progressing along before progress was halted due to the COVID-19 shutdown. However, it needs further changes. The phrase “should be assumed” was changed to “may be assumed” in HRS Section 421J-B(g) and HRS Section 414D-138(f) in S.D.1. These phrases should be changed back to “should be assumed.”

The point of HRS Section 421J-B(g) and HRS Section 414D-138(f) is to provide certainty when computing whether a director is protected from removal under specific sections. The phrase “should be assumed” clarifies what assumption is to be made. The phrase “may be assumed” offers little clarification, but instead opens the door for different assumptions or no assumptions. This will most certainly lead to conflicts and disputes. Accordingly, I urge the committee to restore the phrase “should be assumed” in HRS Sections 421J-B(g) and HRS Section 414D-138(f).

Respectfully submitted,

Lance Fujisaki

LATE

Senate
Committee on Judiciary
Tuesday, March 1, 2022
9:30 a.m.

To: Chair Karl Rhoads
Re: SB2685 SD1, Relating to Planned Community Associations

Aloha Chair Rhoads, Vice-Chair Keohokalole, and Members of the Committee,

My name is Lila Mower and I am 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.

A statement from Robert's Rules of Order Newly Revised (RONR) (12th ed.) 46:43 regarding cumulative voting explains,

"A minority group, by coordinating its effort in voting for only one candidate who is a member of the group, may be able to secure the election of that candidate as a minority member of the board."

However, this statement equally describes how an unpopular incumbent, a dominant director who persuades his compliant board to use proxy assignments to the board to cumulatively stack those votes in his favor, retains his seat. This has been observed in many association elections, shocking owners who assumed that the disfavored candidate would lose his seat but did not.

Therefore, ONLY IF PROXY ASSIGNMENTS TO THE BOARD ARE ELIMINATED can Hui 'Oia'i'o support this measure. Eliminating the option to assign proxies to the board does not prevent proxy assignments to incumbent directors as individuals.

The use of proxies may lead owners to feel that they are represented by their assignees (i.e., proxy holders). And proponents of proxy usage claim that the four standard proxy options enumerated in HRS514B-123(e), with similar verbiage as HRS 421J-4 (d), offer owners "free choice."

However, the more removed a voter is from the actual casting of his vote, the greater the possibility of nefarious interference and loss of choice.

The standard proxy forms provided by property management companies are "general" proxies that allow the proxy holder to vote however the holder wants, and "for the transaction of any business that may come before the Meeting, including but not limited to the election and re-election of the Board of Directors" (or similar verbiage), and are not "directed" proxies that instruct the proxy holder how to vote.

In 2017, a founding member of Hui 'Oia'i'o initiated a measure which became Act 073, https://www.capitol.hawaii.gov/session2017/bills/GM1174_.PDF which was the result of election records reviews which revealed the inclusion of a phrase into the standard proxies used, "If no

proxy holder is designated, or if no box is checked, or if more than one box is checked, the proxy shall be given to the Board of Directors as a whole,” which allowed easy alteration of proxy documents by the addition of a second checked box by someone other than the proxy assignor, giving the “Board as a whole” the use of that proxy’s voting power, and improperly affecting the election. It was also this inclusion that emphasized the significance of proxy assignments to associations’ boards and the magnitude of exploitation that could and has occurred.

Robert’s Rules of Order Newly Revised does **not** condone the use of proxies nor absentee ballots:

RONR (12th ed.) 45:2 “One Person, One Vote...An individual member’s right to vote may not be transferred to another person (for example, by the use of proxies)”

RONR (12th ed.) 45:56 “Absentee Voting. It is a fundamental principle of parliamentary law that the right to vote is limited to the members of an organization who are actually present at the time the vote is taken in a regular or properly called meeting...The votes of those present could be affected by debate, by amendments, and perhaps by the need for repeated balloting, while those absent would be unable to adjust their votes to reflect these factors. Consequently, the absentee ballots would in most cases be on a somewhat different question than that on which those present were voting, leading to confusion, unfairness, and inaccuracy in determining the result.”

RONR (12 ed.) 45:70 “Proxy Voting...Ordinarily [proxy voting] should neither be allowed or required, because **proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable.**”

The earlier quoted statement from RONR (12th ed.) 46:43 continues,

"However, this method of voting [cumulative voting], which permits a member to cast multiple votes for a single candidate, must be viewed with reservation since **it violates the fundamental principle of parliamentary law that each member is entitled to one and only one vote on a question.**"

Noticeably parliamentarians have testified on this and similar measures. It is not unusual for parliamentarians to be hired--at rates roughly the same as those of association attorneys--to advise on the parliamentary process of association-governed communities’ annual meetings and elections because of the unnecessarily complex process of voting in associations elections. Because of proxies and, in some associations, cumulative voting, these election processes differ from the simple method of voting most citizens are accustomed to twice every two years for public office primary and general elections (e.g., federal elections, state legislature elections, county councils).

To reduce confusion, complexity, and costs, to eliminate improper influences on association elections, and to protect the basic right of association-governed communities’ owners, **Hui 'Oia'i'o opposes the intermediate use of proxies in director elections and supports direct owner voting by ballot, in-person, or by postal mail or electronic mail.**

Mahalo for the opportunity to testify on this matter.