



January 31, 2022

VIA WEB TRANSMITTAL

Hearing Date: Wednesday, February 2, 2022

Time: 9:30 a.m.

Place: Conference Room 229

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

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

Dear Chair Baker, Vice-Chair Chang 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 February 2, 2022 hearing.

Based on the foregoing, and my direct conversations with Steve Glanstein regarding SB 2685 had today, 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



**HAWAII STATE ASSOCIATION OF PARLIAMENTARIANS
LEGISLATIVE COMMITTEE
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January 31, 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 SB2685 with amendments; Hearing Date: February 2, 2022 at 9:30 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.

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 with amendments**.

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. McKeller, LLLC; and several stakeholders.

The 2020 CPH Committee issued a report (2020 SCR 3449³) which stated in part:

“Your Committee finds that the cumulative voting provisions under the Hawaii Nonprofit Corporations Act may be manipulated by planned community association boards of directors to prevent minority groups from attaining representation by simply omitting cumulative voting from meeting notices. This measure will clarify that the cumulative voting provisions under the Hawaii Nonprofit Corporations Act do not apply to planned community associations governed under the State's planned community association laws.”

“Your Committee notes that stakeholders have had an opportunity to discuss potential amendments to clarify the cumulative voting procedures for planned community associations, similar to those found in the statutes governing condominium associations. Accordingly, amendments to this measure are necessary to incorporate this consensus language.”

The 2022 bill as submitted didn't match the 2020 bill that was coordinated with numerous stakeholders. We recommend that Sections 1 and 4 of the current bill be amended as follows:

SECTION 1.

[No changes proposed to §421J-A]

“§421J-B Removal of directors elected by members or directors. (a) The members may remove one or more directors elected by **them** [cumulative voting by the members] with or without cause unless otherwise provided in the articles of incorporation, declaration, or bylaws. If the removal is successful, the replacement director or directors shall be elected for the remainder of the removed director's or directors' term or terms in accordance with all applicable requirements and procedures in the articles of incorporation, declaration, or bylaws, and this chapter. If **[a] the replacement director or directors [is]** are not elected at the meeting **[at] in** which the removal occurred, notwithstanding **anything** [any provision] to the contrary in the articles of incorporation, declaration, or bylaws, the board may fill vacancies to serve until the next annual or duly noticed special association meeting.”

[Wording in current bill would have precluded removing members who were not elected by cumulative voting.]

(b) If a director is elected by a class, chapter, or other organizational unit, or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

³ Internet link: [2020 SCR3449](#)

(c) Except as provided in subsection (j), a director may be removed under subsection (a) or (b) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized at the meeting, the director **may** [shall] not be removed if the number of votes, or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members at any regular or special meeting; provided that:

(1) The board of directors recommends removal of one or more directors; or

(2) A member delivers to the secretary of the association or managing agent a petition for removal of one or more directors that:

(i) is signed by members representing at least one hundred units or members who own at least twenty-five per cent of the total number of units in the planned community, whichever is less;

(ii) contains the printed name, identification of the unit, and address of the signing members and dates of their signatures;

(iii) is delivered within seven days after the posting of notice of intent to distribute proxies that includes the election of directors in accordance with section 421J-4(e), or within seven days after the posting of a notice of intent to distribute a notice of a meeting under section 421J-3.5(f); and

(iv) the petition is submitted within one hundred twenty days of the earliest signature.

[Suggested separate paragraphs for clarity and deadline to avoid multiple use of the same petition.]

[(1) The member delivers to the secretary of the association or managing agent a petition for removal of one or more directors, signed by members representing at least one hundred units or members who own at least twenty-five per cent of the total number of units in the planned community, whichever is less, and containing the printed name, identification of the unit, and address of the signing members and dates of their signatures; and]

[(2) The petition is so delivered within seven days after the posting of a notice of intent to distribute proxies that include the election of directors in accordance with section 421J-4(e) or within seven days after the posting of a notice of the meeting under section 421J-3.5(e).]

(f) If **the board of directors recommends removal or** a timely petition is delivered to

the secretary of the association or managing agent, the secretary or managing agent shall include the proposed removal in the notice of the meeting.

(g) In computing whether a director is protected from removal under subsections (b) through (d), it should be assumed that the votes against removal are cast in an election for the number of directors to the class to which the director to be removed belonged at the meeting at which the removal is proposed.

[We noted minor non-substantive wording changes were made.]

(h) An entire board of directors may be removed under subsections (a) through (c).

[We noted minor non-substantive wording changes were made.]

(l) If, at the beginning of a director's term on the board, the articles of incorporation, declaration, or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

SECTION 4.

[We noted minor non-substantive wording changes were made for clarity and updates made by 2021 Act 83.]

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

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/

SB-2685

Submitted on: 1/31/2022 7:14:21 PM

Testimony for CPN on 2/2/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dale A. Head	Individual	Oppose	Yes

Comments:

Dale A. Head

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Monday January 31st, 2022

Aloha Hawaii Senate Committees on Commerce & Consumer Protection, and, Judiciary:

A. Having reviewed the proposed ***Senate Bill 2685***, regarding the matter of ***Cumulative Voting***, respectfully, I speak to ***OPPOSE*** it for these reasons:

#1 Its page 1, lines 10 thru 13, omit speaking to transparency and accountability of the voting tabulation process. It has been my own experience that votes assigned via Proxy executed by owners are not recorded in the Official Minutes or Election Certificate. Likewise, there is no Official indication of how those votes are assigned to which candidates. This means people who enter the meeting with a higher number of assigned Proxies from owners can and are often wrongfully denied a Board seat when a Property Manager assigns those Proxy votes, which had been marked for the Board, to candidates who in fact had fewer assigned Proxies. The Managing Agent is not required to advise either Board Members or HOA members as to the Metrics of how many Proxies were marked 'for the Board', or, how he or she used them. Likewise, while the Managing Agent maintains lists of which candidates were assigned a specific number of Proxies

by owner(s), he or she never advises the senders how their Proxy was in fact used. This has led to a breach of trust between owners and the Managing Agent.

#2. Page 6, line 3 specifies that at least one member must give notice "not less than 48 hours" before the meeting for there to be Cumulative Voting, and, line 7 goes on to mention that once one member makes such a declaration no other members need to. Uh, well, this action cannot be communicated to hundreds of owners of a condominium complex unless they are all in instantaneous group communication.

#3 Page 7 lines 1 & 2 prohibit a member from exercising Cumulative Voting if they are also a Director. That makes no sense. I have always had several dozen owners entrust their Proxy to me for voting over many years.

#4 Page 8 Lines 15 through 18 empower a majority of Board members to remove another Board member. This is very bad as it allows a majority to remove a colleague which should be reserved to members. It is an example of *'Tyranny of the majority'*.

#5 Page 9 Lines 1 through 7 provide for removal of a Board member by a majority of other Board members if the individual has missed participating in a 'specified' number of Board meetings. It fails to mention an individual may participate via a simple phone call. Otherwise, such a persons failure to participate is equivalent to 'job abandonment'. If the position becomes vacant by in such a manner, what point is served in 'removing' them? Simply declare the position 'abandoned' under that circumstance and appoint someone else, but, be sure to let all members know there is an opening and they should indicate if they wish to serve. Otherwise it is almost always a 'friend' of the 'Inner Circle' whom is chosen to keep that core group in power, depriving a vast majority of members from being considered.

B. HRS421J does not require *'Reasonable Accommodation'* for owners to cast their own vote when they cannot attend an Association meeting in person, thereby severely compromising core principles of democracy.. As a majority of owners are investors who don't reside on site in the Association, the state should respect their rights to vote, especially as they are taxpayers. Respectfully, Cumulative Voting should be replaced by *Ranked Choice Voting*, in my opinion.

1. By respecting the basic principle of democracy for an owner to cast their own vote, and, moving to Ranked Choice Voting would assure the top vote getters are placed in leadership positions. For instance, the 'President' would be that person receiving the most votes, and so on down the line. Democracy should be respected, not ignored, trivialized, distorted, and 'gamed' by a Managing Agent to keep a Board of Directors 'stacked' with his/her preferred candidates, which is precisely what happens with a combination of Cumulative Voting & stealth awarding of Proxy votes.

C. I urge the committee to vote down this Bill and rework *HRS421j* to make it fair, democratic, and Association elections transparent & honest.

Mahalo Nui Loa - Dale A. Head