

## **Testimony of the Real Estate Commission**

**Before the  
House Committee on Housing  
Wednesday, February 15, 2023  
9:30 a.m.  
Via Videoconference**

**On the following measure:  
H.B. 176, RELATING TO CONDOMINIUM ASSOCIATIONS**

Chair Hashimoto and Members of the Committee:

My name is Derrick Yamane, and I am the Chairperson of the Real Estate Commission (Commission). The Commission offers comments on section 6 through 13 of this bill. As the Regulated Industries Complaints Office (RICO) is the Commission's investigatory and enforcement arm, the Commission defers to RICO regarding the proposed expansion of enforcement authority.

The purposes of this bill are to: (1) expand the Commission's enforcement authority to include violations of requirements for association meetings and board of director elections; (2) require newly elected or appointed condominium association board members to certify in writing compliance with specified duties and obligations; (3) clarify electronic voting device procedures; (4) eliminate proxy voting for condominium associations; (5) establish additional requirements and procedures for association meetings and board of director elections, including notices of election, notice of intent to run for election, ballots, and runoff elections; and (6) establish penalties for improper voting and forgery of ballot envelopes.

Since section 6 proposes new regulatory controls over members of the board of directors of an association of unit owners, a sunrise analysis must be completed before consideration can be given to this measure. Pursuant to §26H-6, Hawaii Revised Statutes (HRS), "[n]ew regulatory measures being considered for enactment that, if enacted, would subject unregulated professions and vocations to licensing or other regulatory controls shall be referred to the auditor for analysis. Referral shall be by concurrent resolution that identifies a specific legislative bill to be analyzed. . ."

Finally, the Hawaii condominium law, chapter 514B, HRS, is based upon the principle of majority rule. Page 27, lines 4 to 11, amends HRS section 514B-124.5 by

Testimony of the Real Estate Commission

H.B. 176

Page 2 of 2

adding subsection (e), which changes this principle by permitting elections to occur without quorum, provided at least twenty per cent of eligible unit owners cast ballots. This is contrary to the Commission's policy and practice to ensure fair and equitable decision-making.

Thank you for the opportunity to testify on this bill.



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
KA 'OIHANA PILI KĀLEPA  
335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: (808) 586-2850  
Fax Number: (808) 586-2856  
cca.hawaii.gov

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

NADINE Y. ANDO  
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA  
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

## Testimony of the Department of Commerce and Consumer Affairs

Before the  
House Committee on Housing  
Wednesday, February 15, 2023  
9:30 a.m.

On the following measure:  
**H.B. 176 RELATING TO CONDOMINIUM ASSOCIATIONS**

Chair Hashimoto and Members of the Committee:

My name is Esther Brown, and I am the Complaints and Enforcement Officer of the Regulated Industries Complaints Office (RICO), which is an agency within the Department of Commerce and Consumer Affairs (Department). RICO defers to the Real Estate Commission's (Commission) position on all policy, administrative and implementation matters regarding the proposed expansion of their jurisdiction, and **offers comments** only on that aspect of the measure.

One of bill's purposes is to expand the Commission's general authority, investigatory powers, cease and desist orders, powers to enjoin, and penalties, to include the provisions of HRS sections 514B-123 and 514B-124.5, which cover "association meetings; voting; proxies," and "voting for elections, cumulative voting" respectively. See page 1, lines 5 – 6; page 2, line 1, 18 – 19; page 3, line 20, and page 4, lines 10 – 11, 17, of the measure.

RICO is an agency within the Department that provides the investigatory and prosecutorial function of licensing boards, like the Commission, that are administratively attached to the Department. Unlike the broad powers that the Commission has over matters affecting real estate in the state, RICO's authority to receive complaints, investigate and prosecute is grounded in commercial real estate transactions for which licensure is required by the Commission because the licensure process will safeguard the health, safety or welfare of consumers of those real estate services.

The rights and events set forth in Hawaii Revised Statutes (HRS) sections 514B-123 and 514B-124.5<sup>1</sup> do not involve the public, do not involve commercial real estate transactions, and they do not require a Commission-issued license. When owners in a project attend their annual meetings and cast their votes, therefore, they are determining issues that are unique to their place of residence, and they are doing so in their capacity as private persons.

Therefore, if the proponent of the measure believes that RICO will be overseeing what happens at every annual meeting and election for every registered condominium project throughout the State, because of the proposed inclusion of sections 514B-123 and 514B-124.5 into the Commission's broad authority, that is not the case. RICO is not authorized to regulate, prohibit, or enjoin this type of personal, private conduct.

Thank you for the opportunity to testify on this bill.

---

<sup>1</sup> HRS section 514B-123 addresses: voting rights and procedures for units owned by multiple persons (subsection a); proxy-voting for units owned by multiple persons (subsection b); voting limitations for units owned by an association (subsection c); conditions for an owner's proxy to be valid (subsection d); the content of owner proxy forms (subsection e); how long an owner's proxy lasts (subsection f); whether a copy of a proxy is as good as the original (subsection g); the procedure for using association funds to distribute or solicit proxies (subsection i); restrictions on solicitations and voting by management (subsection j); and the process for and limitations on owner solicitation of proxies (subsection k). HRS section 514B-124.5 addresses the process for cumulative voting for an association election (subsection a); unit owners' right to cumulate votes (subsection b); how nominees are elected (subsection c); and how vacancies are filled by boards in accordance with the association's governing documents (subsection d).

**HB-176**

Submitted on: 2/13/2023 1:07:21 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Idor Harris	Honolulu Tower AOA	Oppose	Written Testimony Only

Comments:

Honolulu Tower is a 396 unit condominium built in 1982 located at the corner of Maunakea and N. Beretania Streets. The Honolulu Tower Association of Apartment Owners board of directors (comprised of nine elected volunteer members, none of whom receive compensation) voted unanimously, at its Feb. 6, 2023 meeting, to oppose certain provisions of bills working their way through the legislature.

The board opposed provisions in several bills which require new directors to certify in writing compliance with their duties, removing them from office if they do not comply within a specific time frame, required training for board members, expansion of the real estate commission's enforcement authority, adding new requirements for association meetings and board elections including notice of election, intent to run, ballots, runoff elections, election not required unless number of candidates exceeds open seats or vacancies are for unequal lengths of time, quorum not required as long as at least 20% of owners cast ballots, prohibiting proxy voting, requiring voting by mail, attending and casting votes via internet or other electronic transmission technology, paper ballots to be mailed out before any annual or periodic election of board members.

The board believes many of the bills are making it harder for boards to do their jobs. The whole system is designed to put power in the boards. These bills are running counter to that. The way to control it better is to run for the board.

The board also believes that if laws create more work, that will increase costs for both the associations and management companies and staff will have to do the work, taking them away from other duties. Owners are complaining about maintenance fee increases, this year's was close to 10%, most of which were due items beyond our control--the pandemic, supply chain issues, major increase in insurance rates, reserve contributions, unexpected need to replace interior window gaskets, higher electric rates, and replacement of six hot water tanks.

Idor Harris

Resident Manager, Honolulu Tower

## HOUSE COMMITTEE ON HOUSING

Hearing Date: Wednesday, February 15, 2023

Time: 9:30 AM

Place: Conference room 312, via video conference

### Testimony re House Bill 176

Chair Hashimoto and Members of the Committee

My name is John Morris, and I am testifying on behalf of the Legislative Action Committee Of The Community Associations Institute, Hawaii Chapter. CAI is a national organization devoted to improving the management and operation of condominiums and other homeowner associations. The Hawaii chapter is a local chapter of the national CAI organization. CAI opposes House Bill 176 because it is unnecessary and creates more problems than it resolves.

For example, HB 176 mandates that board members "certify" that they have read their declaration, bylaws, house rules and other relevant documents. If they fail to do so, they can be automatically removed from the board. Unfortunately, this requirement fails to recognize that those documents are often long, complex, and difficult to understand or that the directors are volunteers who are serving without any compensation.

Moreover, those documents provide a level of detail that is far beyond what a board member needs to know to fulfil his or her responsibilities to the other members of the association. Some boards are already having problems getting directors willing to serve on the board. This section of HB 176 will simply make the problem worse.

It would be better to first try to make a concerted effort to notify board members of the educational opportunities provided by the Real Estate Commission under the condominium education fund. For example, it might be simpler to require that the managing agent provide every new board member with links and additional information to access those REC resources. Then, with this simple notice, the directors who are willing to learn will at least have the information they need to do so. Similarly, managing agents can be encouraged to alert their board members to other educational opportunities.

Section 7 of HB 176 imposes requirements relating to electronic voting. It should be confirmed that these requirements can be met by the companies that provide electronic voting.

Section 7 also provides for the complete elimination of proxies as a method for voting by those owners who cannot attend the association meeting. Instead, proxies would be replaced with mail ballots. This will create one obvious problem: a mail ballot cannot be used to deal with issues that arise during the meeting because those issues will not be known at the time the owner submits his or her vote by mail ballot. This problem, in turn, results in many of the complex mail

ballot requirements proposed by HB 176 – mail ballots are simply not as flexible as proxies in dealing with issues that come up during the meeting. Moreover, the act proposes to add numerous detailed and complex requirements for ballots that will make them less effective because if the requirements are not met, the ballots will be invalidated.

Regardless, the act fails to recognize that the law already gives board members and owners the same opportunity to solicit proxies at association expense – i.e., to provide equal opportunity of solicitation for both board members and owners. The law actually requires the board to post notice of an intent to distribute proxies at association expense so that owners have the opportunity to submit their request for proxies at no cost to them

Moreover, owners often successfully do solicit proxies to get themselves elected or to change the composition of their boards. In other words, proxies are not solely a benefit to directors, and the proposal to eliminate them in favor of mail ballots will not necessarily change anything. The issue is not proxies but whether the owners are willing to put in the time and effort to convince their fellow owners that the current board is not representing them and that the owners should assist in electing a more responsive board.

Finally, the act proposes that the Real Estate Commission must supervise and enforce the complex ballot requirements imposed by HB 176. Given the hundreds of annual meetings held every year in Hawaii, there is a real question whether the commission staff will have the time to do so in any effective manner.

In summary, HB 176 is attempting to correct a problem that does not exist by imposing complex and detailed requirements for mail ballots. CAI respectfully request that the committee hold the bill.

Thank you for this opportunity to testify.

John Morris

For CAI Hawaii Chapter



# LAW OFFICES OF PHILIP S. NERNEY, LLLC

A LIMITED LIABILITY LAW COMPANY  
335 MERCHANT STREET, #1534, HONOLULU, HAWAII 96806  
PHONE: 808 537-1777

February 13, 2023

Chair Troy N. Hashimoto  
Vice Chair Micah P.K. Aiu  
Committee on Housing  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **HB 176 OPPOSE**

Dear Chair Hashimoto, Vice Chair Aiu and Committee Members:

HB 176 should not be passed by the Committee. This is so for a variety of reasons.

For one, it is a "solution" in search of a problem. More fundamentally, it is an attack on condominium self-governance stuffed with wish list items.

Attacks on proxy voting are a perennial favorite of opponents of self-government. HB 176 is distinct from other attacks on proxies in that it proposes to do away with proxies altogether after years of attack on the "board majority" option have repeatedly failed.

Satisfied owners who are not activists are entitled to express their support for incumbents by assigning a proxy to the board. Unsatisfied owners are at liberty to assign a proxy to someone else.

Owners can also attend meetings and vote for themselves or for others of their choice. Activists who favor minority rule want to deprive owners of the freedom of choice owners presently enjoy.

Moreover, activists seeking to impose minority rule recognize that some owners have work, family or other priorities that will keep them from owner meetings and even from taking the time to learn about candidates. Depriving satisfied owners of the option to participate by granting a proxy means that the most motivated will prevail.

It is also true that the alternative of mail voting fails to accommodate nominations that may arise at a given meeting and fails to address other issues that may arise during a meeting.

Chair Troy N. Hashimoto  
Vice Chair Micah P.K. Aiu  
February 13, 2023  
Page 2 of 2

Indeed, HB 176 prescribes that a ballot: "Shall not allow for write-in candidates". Why?

HB 176 does not support a fluid and dynamic political process characterized by liberty and choice. Rather, it is overly prescriptive and plainly anti-democratic.

It is an effort to assure minority rule. Activists want to disenfranchise many by mandating rigid requirements that many people will find inconvenient.

Note that it is proposed within HB 176 that:

(e) A quorum shall not be required to hold the election; provided that the election shall not be valid unless at least twenty per cent of the eligible unit owners cast ballots.

### **Twenty percent?**

HB 176 would expressly enshrine minority rule as a principle of condominium governance. How and why would that be an improvement over the current system?

It is useful to recall that Chapter 514B was developed by a legislatively appointed Blue Ribbon Recodification Advisory Committee. If such a radical departure from majority rule were meritorious, how did that committee miss it?<sup>1</sup>

HB 176 is unworthy of serious consideration.

Very truly yours,

*Philip Nerney*

Philip Nerney

---

<sup>1</sup> Final Report to the Legislature-Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000) ("Final Report") at 148.  
[https://files.hawaii.gov/dcca/reb/condo\\_ed/condo\\_recod/condo\\_workingrecod/recod\\_final/2003-recod-report.pdf](https://files.hawaii.gov/dcca/reb/condo_ed/condo_recod/condo_workingrecod/recod_final/2003-recod-report.pdf)

**HB-176**

Submitted on: 2/13/2023 7:55:55 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Mike Golojuch, Sr.	Palehua Townhouse Association	Oppose	Written Testimony Only

Comments:

Palehua Townhouse Association opposes HB176. Please defer this bill.

Mike Golojuch, Sr., President



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

February 13, 2023

Honorable Rep. Troy N. Hashimoto, Chair  
Honorable Rep. Micah P.K. Aiu, Vice-Chair  
House Committee on Housing (HSG)  
Hawaii State Capitol, Room 312  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Testimony in OPPOSITION to HB176; Hearing Date: February 15, 2023 at 9:30 a.m. in House Comm. conference room 312/videoconference; sent via Internet**

Dear Rep. Troy N. Hashimoto, Chairman; Rep. Micah P.K. Aiu, Vice-Chair; Committee Members:

Thank you for the opportunity to provide testimony on this bill. Unfortunately, the notice of hearing only provided us with just over 24 hours to submit testimony. This was too short a time to provide a more extensive analysis. Therefore, I can include only a few of the obvious issues raised by this proposed legislation.

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 40 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2004.

This testimony is provided as part of HSAP’s effort to assist the community based upon our collective experiences with the bylaws and meetings of numerous condominiums, cooperatives, and planned community associations.

This testimony is presented in STRONG OPPOSITION to HB176.

**Summary of Bill; Comments:**

Sections 1-3 propose to assign investigative authority to the Real Estate Commission for every condominium meeting and cumulative voting election (HRS §514B-123 and HRS §514B-124.5).

Section 4 proposes to empower the Real Estate Commission to conduct an investigation and sue on behalf of the State to enjoin a continuance of a violation of the above sections.

Section 5 criminalizes a violation of HRS §514B-123 and HRS §514B-124.5 and creates a civil cause of action.

Section 6 amends HRS §514B-106 to remove the use of proxies for special association meetings to fill vacancies. It also prescribes “homework” for elected board members to certify reading the association's governing documents and “other association documents necessary for the operation of the property.” It provides for a director's automatic suspension and record keeping requirements for such certification.

Section 7 amends HRS §514B-121 to make numerous technical changes to the electronic voting device, including the availability of an audit train for recount, inspection, and review. It also removes proxies.

Section 8 amends HRS §514B-123 to completely remove proxies and provide a ballot to be delivered in a similar manner as a proxy form. It mandates the form of the ballot and removes the write-in capability. It prohibits an owner's signature. It provides for a mail ballot. It overrides an association's quorum for the mail ballot by reducing it to 20% of the eligible unit owners.

Section 9 amends HRS §514B-124.5 to remove use of proxies and expand the section from cumulative voting to include a runoff election and create a Class C felony if a person “knowingly votes when the person is not entitled to vote under this chapter [Chapter 514B].”

Sections 10-13 amends other sections to be compatible with the previous amendments.

**Current Status:**

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

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

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

It also balances the rights of owners to make a motion to remove one or more board members.

**If association funds are to be used for proxies, there is a mandatory posting on the property and equal opportunity for owner solicitation.** This provides owners with an opportunity to require that their names and statements of up to one page be submitted with the official meeting notice. Many boards go beyond this minimal requirement and e-mail or mail the solicitation to owners in order to attract candidates to the board.

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

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

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

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

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

**Our position:**

HB176 is a terrible bill. It obviously originated from a small minority of owners unable to get elected to their condominium board.

They may not realize that this bill, if enacted, could have the opposite effect. It could make it practically impossible to remove a sitting board member before their term is expired.

They also may not realize that this bill, if enacted, will destroy ballot secrecy and will destroy an owner's right to write-in the name of a candidate of their choice (Page 20, line 1). This right has existed with secret ballots since 1876 and we maintain that there is really no compelling reason to destroy this ownership right.

**We believe that the changes proposed in this bill are unnecessary and are not in the best interest of condominium associations or their owners. There is no good or compelling reason to make these proposed changes.**

**Conclusion:**

HRS §514B-121 and HRS §514B-123 are complicated. There is pending legislation in the Senate (SB886) and proposed changes by stakeholders to simplify the process.

These statutory provisions have been adjusted by our legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used the existing provisions to successfully conduct thousands of association meetings.

This bill complicates the entire process and proposes to raise micro-management of condominium association meetings to a new level.

If the Legislature wants to become involved in this level of management, e.g.

- a. outer and inner mailing envelopes,
- b. electronic voting devices that disclose owners' votes for recounting,
- c. destruction of owners' rights to provide a proxy to an individual, the board, or even for quorum only,
- d. destruction of owners' rights to write-in candidates, and
- e. practical impossibility to remove a director,

then: (1) defer this bill and (2) have a team of stakeholders and experts work together on a different process.

Recently, the CPC deferred HB377 which represented another attempt to make changes to the existing proxy form.

**This bill is similar to the use of a sledgehammer to kill an ant on a tile floor. We respectfully ask that the Committee defer or hold this bill.**

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

Sincerely,

*Steve Glanstein*

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

## Testimony In Support of HB176

**Submitted for:** Housing (HSG) Committee Hearing, scheduled to be heard on Wednesday, 2/15/23 at 9:30 AM.

Aloha Chair Hashimoto, Vice Chair Aiu, and Members of the Committee,

**I strongly support HB176.**

I would like to point out that the first committee referral for HB176 should have been to the “subject matter committee,” which is Consumer Protection & Commerce (CPC). The referral to the Housing Committee was not necessary, and as such HB176 should be properly referred to CPC and a hearing scheduled ASAP.

**HB176 will provide fair and honest Association elections and take away the abuse of proxies, which is prevalent throughout Hawaii in many Associations.** I know this all too well, as there is a serious abuse of proxy solicitation and proxy hoarding by Directors on the Board at my AOAO. This is done to retain power and keep others off the Board. Certain Directors are also abusing the use of owner emails to solicit proxies, as they have access to the full list of owner email addresses. This is yet another unfair advantage that by itself, should make it 100% clear that the solicitation of proxies and their use needs to be replaced by election ballots and fair elections.

Malfeasance by Board Members, Boards, and Management Companies has become a common occurrence, and homeowners need their State Legislators to enact laws that will better protect them. Whoever came up with the idea of giving your proxy to the “Board as a Whole” or “Directors Present,” was misguided, and our Legislators that previously followed along were taken down a path that only leads to abuse of power and corruption.

Other elements of this carefully thought-out Bill are intended to further ensure fair elections, and provide better oversight and enforcement.

**Fair elections are expected by all Hawaii residents, and no abuse of the election process should ever be allowed.**

**I ask the Committee and all State Legislators to please support HB176.**

**And I ask you to support and act on HB1297, which was also introduced by the Kokua Council on behalf of our kupuna and all residents of Hawaii.**

Mahalo,



Gregory Misakian

2<sup>nd</sup> Vice President, Kokua Council  
Board Member, Waikiki Neighborhood Board

*The Kokua Council is one of Hawaii's oldest elder advocacy groups. We advocate for issues, policies, and legislation that impact the well-being of seniors and our community.*

**House of Representatives  
Committee on Housing  
Thursday, February 15, 2023  
9:30 a.m.**

To: Chair Representative Troy Hashimoto  
Re: HB 176, Relating to Condominium Associations

Aloha Chair Hashimoto, Vice-Chair Aiu, 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.

Kokua Council has over 800 members and affiliates in Hawaii and on behalf of these members, **I support HB 176.**

HB 176 has two major purposes:

(1) to require certification by Board Directors that they have read the governing documents and other documents pertinent to the governance of their association and are prepared for the managerial, financial, and legal responsibilities necessary to properly govern their associations, and

(2) to improve and protect the integrity of the association election process.

Although many skills are needed to govern successfully, knowledge of their association's governing documents and other pertinent documents is the foundation from which Directors govern responsibly, aware of the expanse and limits of the laws and rules of their association, aware of their duties and confines of power, and aware of the possible consequences of poor governance.

Too many of Hawaii's condominium associations and their owners and residents are in financial crisis, which may have been circumvented if Directors were aware of their responsibilities and the potential consequences of failing their duties.

All buildings deteriorate with time and associations must have adequate levels of reserves to mitigate and remediate any structural issues that may occur. Directors must make difficult decisions that may include unappealing but necessary financial choices such as increasing fees that will enable them to keep their associations physically and fiscally sound. To generate trust and overcome financial conflicts, Directors must be able to help owners understand their responsibilities.

Regarding owners' responsibilities, the DCCA states, "the owners' most important role is electing Directors." Thus, each owner must be assured that their vote conveys their true choice.

Elections are so essential to a representative democratic government that the Department of Homeland Security has defined election infrastructure as "critical infrastructure," as fundamental as roads, bridges, and other public infrastructure.

While the use of proxies may lead owners to feel that they are represented, and proponents of proxy usage claim that proxy options provide “free choice,” **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 authorized proxy forms provided by property management companies are “general” proxies that allow the proxy holder to vote however the holder wants and are not “directed” proxies that instruct the proxy holder how to vote.

Personal examinations of multiple condominium associations’ election records revealed that acquiring franchise-by-proxy-assignments in these condominium associations was highly problematic. The appearance of improper electoral processes was found to occur primarily at the property management company level as they were the facilitators of those association elections despite their pecuniary interest in the election results.

Some of these observations were:

- (a) voiding *valid* proxies and
- (b) accepting invalid proxies for use, both actions may be discounted as human error, but were noticeably tilted towards board incumbents;
- (c) misplacing certain proxies which mishandling favored incumbents; and
- (d) the omission of valid proxies from the final tabulation so that fulfilling the quorum would appear to have failed, causing the annual election to be deferred to a later date and allowing incumbent boards to continue their associations’ business until the next election.

If the competition between candidates is intentionally lopsided, then those to whom the elections are tilted may not necessarily represent owners’ best interests. Some directors rule these associations for years, even decades, as if they were anointed.

In 2017, Act 073 was adopted. It was the result of election records reviews that revealed the inclusion of a phrase into the standard proxies used by at least two major property management companies:

“...if more than one box is checked, the proxy shall be given to the Board of Directors as a whole.”

This simple phrase 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 this improper alteration of a proxy that brought to attention the significance of proxy assignments to the associations’ boards and the magnitude of exploitation that could occur.

Despite Act 073, a similar alteration of a standardized proxy by a second checked box by someone other than the owner can still occur, disenfranchising that owner by invalidating his desired proxy assignment and demoting his proxy to be used for “quorum purposes only.”

Representatives should end these improper processes by eliminating voting-by-proxy, enabling mail-in ballots, and making association election rules enforceable.

In 2022, Hawaii's Office of Elections reported that the mail-in ballot turnout was a record-breaking 96% of overall voter turnout.

A similar direct-voting-by-ballot method, by postal mail and electronic mail, with an auditable document trail, would benefit, engage, and empower more condominium homeowners than the current condominium association electoral process, and would obviate the need for proxy assignments. The mail-in ballot process allows more owners across the world to participate directly in their associations' meetings.

Kokua Council encourages Representatives to support HB 176 whose two purposes will only improve and enhance condo association governance.

Mahalo for the opportunity to testify in support of HB 176.

Rachel M. Glanstein  
1099 Ala Napunani St #901  
Honolulu HI 96818  
[rglanstein@gmail.com](mailto:rglanstein@gmail.com)

February 14, 2023

House Committee on Housing (HSG)  
Hawaii State Capitol, Room 312  
415 South Beretania Street  
Honolulu, HI 96813

RE: Testimony in Opposition to HB176

Aloha,

Thank you for the opportunity to provide testimony on this bill. This testimony is provided in opposition to HB176. Please defer or hold this bill.

I am a professional registered parliamentarian and I am often engaged to chair association meetings, and sometimes even board meetings. Although there are a few association elections with more candidates than seats, I've found that most associations have uncontested elections.

I also serve as secretary for my own condo board. My board should have five members, but we have had two vacancies for a few years now because people don't want to serve. The problem is not that there are too many candidates for board service – it's that there are too few.

Any legislation that makes it more difficult to serve in an unpaid volunteer position on an association board is not a good idea. If this bill passes, I foresee a mass exodus of board members. Board members are already held to a higher authority, and they don't need more responsibilities heaped upon them.

I do feel that board members should be familiar with the governing documents and the local laws, but they are volunteers, and a vocal minority of owners shouldn't make near impossible requirements for board member service. This would make it difficult for owners with jobs to serve on boards.

The existing proxy statute provides a fair method to use association funds to solicit proxies, whether by individual owners or the board. The changes proposed in this bill are not necessary.

Mahalo,

Rachel M. Glanstein

**HB-176**

Submitted on: 2/14/2023 9:14:39 AM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jeff Marsh	The Palms at Wailea	Oppose	Written Testimony Only

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

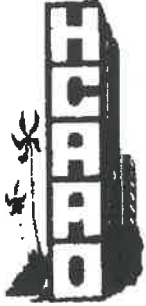
I STRONGLY OPPOSE H.B.176 and join in the testimony submitted by M. Anne Anderson, Lance S. Fujisaki, and Paul A. Ireland Koftinow.

Respectfully submitted,

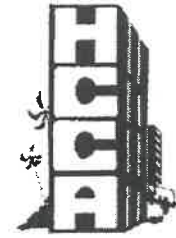
Jeff Marsh

Site Manager

The Palms at Wailea AOAO



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



February 14, 2023

**LATE**

Rep. Troy Hashimoto, Chair  
Rep. Micah Aiu, Vice-Chair  
House Committee on Housing

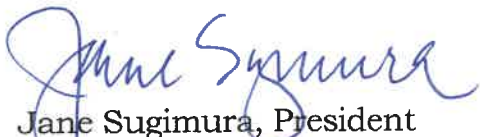
Re: Testimony in Opposition to  
HB176 Re Condominium Associations  
Hearing: Wednesday, February 15, 2023, 9:30 a.m., Conf. Rm. #312

Chair Hashimoto, Vice-Chair Aiu and Members of the Committee:

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

HCCA strongly opposes this bill and joins in points made in the testimony of Steve Glanstein of the Hawaii State Association of Parliamentarians and asks that you defer action on this bill.

Thank you for the opportunity to testify on this matter.

  
Jane Sugimura, President

**LATE**

**HB-176**

Submitted on: 2/14/2023 4:49:42 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Primrose Leong-Nakamoto	AOUO POAMOHO CAMP	Oppose	Written Testimony Only

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE H.B.176 and join in the testimony submitted by M. Anne Anderson, Lance S. Fujisaki, and Paul A. Ireland Koftinow.

Respectfully submitted,

Primrose K. Leong-Nakamoto (S)



**LATE**

**HB-176**

Submitted on: 2/14/2023 6:37:23 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dante Carpenter	Country Club Village, Phase 2, AOA	Comments	Written Testimony Only

Comments:

rephashimoto@capitol.hawaii.gov; repaiu@capitol.hawaii.gov

I speak against H. B. 176 Relating to Condominiums. As an elected Board Director for the Country Club Village, Phase 2, AOA, with over 25 years as a member and Director, I believe this measure is not necessary to add to an already existing complicated Statute which regulates Condominiums!

I concur with the testimony offered by Paul. A Ireland Koftinow and Anne Anderson, Esq.

Respectfully submitted,

*Dante Carpenter*

**HB-176**

Submitted on: 2/13/2023 9:22:06 AM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Michael Curtis	Individual	Oppose	Written Testimony Only

Comments:

To disallow proxy voting would prevent most Condo Association meetings a quorum to do business. Even with proxies, quorum is a challenge in many associations.

Respectfully

**HB-176**

Submitted on: 2/13/2023 10:54:30 AM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Robert Godbey	Individual	Oppose	Written Testimony Only

Comments:

I write in opposition to the provisions of this bill essentially eliminating proxy voting for condominium associations. I am president of our condo board, but write in my individual capacity.

The proposed legislation will increase the complexity of an already difficult and complex process. It is hard to get owners to serve on our condo board, and I think this is not unusual. Increasing the complexity of the process will not be helpful. Proxy voting has worked well for most condo boards and will continue to work well for most condo boards. Changing the process will increase the cost and complexity of the process for all condo boards and is unnecessary for most.

On the mainland we have seen politicians unhappy with the election results try to restrict voting, with the thought that restricting voting will favor their cause. This is not a good practice, and the legislature should not do the same for condo boards. Proxy voting works well, and has worked well for decades. The change proposed in this legislation is unwise.

I urge the defeat of this bill.

**HB-176**

Submitted on: 2/13/2023 12:30:34 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
lynne matusow	Individual	Oppose	Written Testimony Only

Comments:

I am an owner occupant of a high rise condominium on the outskirts of Chinatown. Please accept this as testimony in strong opposition to this over reaching and overly broad bill. A lot of this resembles ombudsman bills which have been introduced and defeated at the legislature over the years. There was an informational meeting on condos in the Senate CPN committee today. It was enlightening and covered many reasons why this bill should be deferred, for eternity.

Condo boards are elected by the owners. Often it is difficult to recruit members. Last year there were three positions up for election, with only three candidates. Many owners voiced concern regarding the budget, reserves, replacement windows, elevators, etc. Yet non of them ran for the board.

This also appears to be the establishment of another bureaucracy, at state expense, when one is not needed. It eliminates proxy voting, which is how owners normally vote. This bill is more onerous than HB 1167, which I also testified against.

I also object to bills which are introduced by request without any indication of who the requester is (though I can guess). If someone wants a bill, they should come forward and have their name on the bill so everyone can see who is involved.

It also calls for removal of a board member who does not comply with certain provisions. There are methods to remove a board member: no longer owns a unit, through election, through a special association meeting calling for the removal. This provision is unnecessary.

What this bill does is make it harder for board members to do their jobs.

Please permanently defer this bill.

**HB-176**

Submitted on: 2/13/2023 1:50:02 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kate Paine	Individual	Comments	Written Testimony Only

Comments:

Measures that educate HOA directors are sorely needed. Penalties will keep honest and well meaning owners from running. Hopefully the measures written within will keep the best participating. .

Dear Chair Hashimoto and Representatives on the Committee on Housing,

I am submitting testimony in favor of HB 1161 and 176. Specifically, I am in favor of requiring training and certification of board members (HB 1161), eliminating proxies from board elections (HB 176), and specifying vote by mail procedures (HB 176).

I am a retired Compliance Officer with extensive professional audit experience. I have been a member of Makaha Valley Towers (MVT) Condominium Association for 2.5 years. Last year I audited our condominium’s election specifically to determine the impact of proxies on our board elections.

The majority of our association members do not identify MVT as their primary residence. As you can see from the data below, the number of proxy votes cast by the board members is significantly larger than the number of votes and proxies cast by all members attending the annual meeting. The election process used for many years virtually guarantees that the board controls every election outcome.

I strongly support the provisions in HB 176 removing proxies from the election and specifying the conduct of elections by mail. I am happy to provide additional information if requested.

Sincerely,

Caroline Miner

<b>Total Votes</b>	188	184	183	182	182	168	93	57	49	27
** Attendee votes & proxies	68	64	63	62	62	48	93	57	49	27
<b>Subtotal Board Proxy Votes</b>	<b>120</b>	<b>120</b>	<b>120</b>	<b>120</b>	<b>120</b>	<b>120</b>				
* Board Member Proxies	47	47	47	47	47	47				
Assoc common units	8	8	8	8	8	8				
Board Equal Shares	17	17	17	17	17	17				
Board as a whole	48	48	48	48	48	48				
Incumbent & candidate initials	SC	NB	RP	NL	HR	GR	TA	KL	CM	VR

\* Probable 47 out of 54 based on what I could deduce from the ballots

\*\* Includes 7 out of 54 board members' proxies and all votes cast by people at the meeting, including incumbent board members and candidates. Thus, incumbent vote counts, except GR, appear to include about 15 board-held proxy votes.

**HB-176**

Submitted on: 2/13/2023 4:28:17 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sandie Wong	Individual	Oppose	Written Testimony Only

Comments:

I support reasonable educational requirements for Board members, but this bill goes way beyond that and calls for some radical changes that are not appropriate at this time. Thus, I must oppose.

**HB-176**

Submitted on: 2/13/2023 4:54:36 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jeff Sadino	Individual	Support	Written Testimony Only

Comments:

I SUPPORT HB 176.

This Bill will promote good condo governance and harmony by ensuring that:

Board Members have a basic familiarity of their Governing Documents and their responsibilities as a Board Member.

Improve the calendar/schedule for elections so that Property Managers cannot send out proxies (that almost always go to the Board as a Whole) before people have had a chance to express their interest to run for election.

Improve election integrity by using a two-envelope system so that the Property Manager/Board do not know the vote count prior to the actual Association Meeting.

Reduce the amount of election fraud that has been undeniably documented in condo governance.

Thank you for the opportunity to provide testimony,

Jeff Sadino

Committee on Housing



**HB-176**

Submitted on: 2/13/2023 6:47:00 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Richard Emery	Individual	Oppose	Written Testimony Only

Comments:

I have always been proud of Hawaii and its continuing efforts to make sure everyone can vote. Condominiums are organizations with its stakeholders a unit owner. Unit owners may be an individual, a family, a LLC, a corporation; some may be local and others on the mainland. But all that have a legal interest in their property. All have a right to vote including to voluntarily give a proxy to whom they select. It's how all corporations work throughout Hawaii and theUSA.

Electronic voting is coming of age but no platform exists today than can properly and accurately deal with the multitude of annual meeting issues like cumulative voting tabulation. It does not exist (yet).

Often candidates for election are nominated at the annual meeting. Let's not forget more than 1,000 Hawaii condominium have less than 50-units. Roberts Rules already addresses procedures, elections, run-offs, etc.

This is a horrible Bill that only creates additional cost to an association.

February 12, 2023

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE H.B.176** for the reasons set forth below.

Sections 514B-121, 123 and 124.5 are probably the most intricate, dense and complex provisions in Chapter 514B. These provisions have been tweaked and fine-tuned by the Legislature over the past several decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used the subject provisions to conduct thousands of association meetings. S.B. 729 essentially takes a sledgehammer and destroys the statutory scheme without good cause. The proposed changes will very likely result in unanticipated outcomes, challenged elections and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer H.B. 176 and appoint an advisory group of experts to study the proposed changes to ensure that the amendments are clear and unambiguous.

I have addressed issues with H.B. 176 below. However, I would note that H.B. 176 raises far more issues and problems than I have the time or space to point out in this testimony.

**A. Sections 1 through 5.**

Sections 1 through 5 of the bill will give the real estate commission the power to investigate violations of HRS Sections 514B-123 and 124.5 and even go so far as to state that the failure to comply with HRS Sections 514B-123 and 514B-124.5 shall constitute a misdemeanor punishable by a fine not to exceed \$10,000 or imprisonment for a term not to exceed one year, or both. Additionally it provides for civil penalties of up to \$10,000 per violation. It then goes on to revise HRS Sections 514B-123 and 514B-124.5 in a confusing manner, making it difficult for associations to understand what is required of them to comply.

**B. Sections 6 – 13 Removing References to Proxies.**

H.B. 176 will radically change the manner in which condominium associations conduct their meetings as it removes provisions on proxy voting. For the decades, owners have been allowed to vote at meetings through proxies. The proxy voting provisions had been in place for a long time before the Condominium Property Act was recodified in 2006. During that process, the proxy voting provisions in Chapter 514A were incorporated into Chapter 514B with few changes. Over the years, the proxy provisions have been refined.

The proxy provisions benefit associations by allowing associations to conduct association meetings with fewer than 50% of the owners present in person. To obtain a quorum, most association bylaws require the presence of at least a majority of the members, in person or by proxy, at association meetings. Associations typically obtain a quorum by allowing members to submit proxies for quorum purposes only, or to vote on their behalf. Even then, it is often difficult

to obtain a quorum. Most owners do not attend meetings because they may be traveling or residing elsewhere, owners simply choose not to attend, or owners' schedules do not permit them to attend association meetings.

Through the use of proxies, associations are able to hold meetings and vote on necessary items of business, including but not limited to elections. Elections are not the only items of business that require the vote of owners. Moreover, in person meetings have been an important part of the governance of condominium associations. At association meetings, reports are given to notify owners about, among other things, the financial position of the association, completed and planned projects, the status of the reserve accounts, and other matters. Owners are permitted to ask questions of the board and to raise issues of common interest to the owners. Owners have the right to make motions at association meetings.

Without the proxy voting provisions in Section 514B-123(b), many associations will find it impossible to obtain a quorum for association meetings. Associations will not be able to have owners approve tax resolutions and vote on other matters that are taken up at association meetings. The sense of community, trust and good will that are fostered by successful association meetings will be lost as meetings must be adjourned due to the lack of a quorum. Accordingly, the provisions allowing voting by proxy for the election of directors and the conduct of other business should be retained.

#### **C. Section 6 – Change to HRS Section 514B-106(g).**

The amendment to HRS Section 514B-106(g) is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burdens on condominium associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, H.B. 176 will do far more harm than good.

H.B. 176 is unnecessary because board members already have a statutory fiduciary duty to their associations. HRS Section 514B-106 provides that, "In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D."

Chapter 414D of the Hawaii Revised Statutes, the Hawaii Nonprofit Corporations Act, Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should read the governing documents, H.B. 176 will raise numerous problems for community associations and property management companies.

First, H.B. 176 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to retain board members' written certificates, in practice, imposing legal requirements for this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards. There are approximately 1,500 condominium associations registered in Hawaii. Although I am not aware of statistics on the total number of board positions for all condominium associations in Hawaii, the number of positions probably exceeds 10,000.

Second, like legislators, some board members remain in office for many years. H.B. 176 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Third, H.B. 176 will discourage many association members from serving on boards. Any director who fails to sign a written certificate will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability. Furthermore, in light of H.B. 176, by having to read the governing documents, board members will be implicitly required to understand all of the governing documents. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they read the governing documents.

Fourth, the provisions on the appointment of a member to temporarily fill a vacancy is nonsensical as the interim member has no obligation to comply with subsections (1), (2) and (3).

In summary, while this bill may have good intentions, it has not been drafted with sufficient clarity to serve a useful purpose. Instead, it will prove to be overly burdensome on associations and will lead to confusion and conflicts. Additionally, the administrative burden will add to the cost of operating an association at a time when many associations are struggling to deal with inflation.

#### **D. Section 7.**

The changes to HRS Section 514B-121(b) provide that a board shall establish reasonable procedures to provide for the secrecy and integrity of a unit owner's vote including "authentication" of each owner's identity and the validity of each electronic vote to ensure that the vote was not altered in transit. This provision may be well intended, but it offers no explanation of how the authentication is to be performed. If criminal sanctions apply to noncompliance, the legislature must at least offer a clear explanation of what constitutes compliance.

The new HRS Section 514B-121(b)(6) provides that any vote by an electronic voting device shall be limited to issues specifically identified in the electronic vote. However, nowhere does the section explain what the reference to “the electronic vote” means in this context.

HRS Section 514B-121(b) regarding electronic voting devices is not consistent with HRS Section 514B-121(e) regarding electronic or machine voting. It is impossible to determine what the difference is between an electronic voting device referred to in HRS Section 514B-121(b) and electronic or machine voting referred to in HRS Section 514B-121(e). The better approach would be to delete HRS Section 514B-121(b) in its entirety and avoid having two conflicting provisions.

#### **E. Section 8.**

Section 8 of this measure will impose new ballot requirements for the election of directors. It also contains conflicting provisions on ballot voting. It amends HRS Section 514B-123(b) to strike proxy voting but continues to allow for voting by mail and electronic transmission. However, it amends HRS Section 514B-123(e) to require that directors be elected by ballot sent by mail, which conflicts with voting by electronic transmission. This also conflicts with HRS Section 514B-121(b) and Section 514B-121(e) found in Section 7 of the bill which allow for electronic meetings, electronic voting devices, and electronic and machine voting.

The time requirements to distribute and return ballots are not reasonable and will result in disenfranchising many voters. This measure will require that ballots be sent to owners between 21 and 34 days before the election. The owner must then return the ballot by no later than 4:30 p.m. on the second business day before the annual meeting. This will leave many owners with very little time to receive, review, and return ballots to their association’s secretary or managing agent. This is especially true for owners with mailing addresses in foreign countries due to delays in international mail.

This measure will prohibit members from making nominations from the floor at annual meetings which is a very common practice. It also prohibits write-in candidates, which is allowed by Robert’s Rules of Order. As a result, this measure will unfairly disenfranchise association members because it will create fewer options and more restrictions on voting for candidates.

This measure also requires that unit owners or board members who wish to use association funds to solicit votes (presumably to be added on a ballot) must submit a statement to the board 40 days before the election. This allows less than six days for the association to review each statement, to add names of candidates to a ballot, and to mail out the ballot if they wish to send the second notice and written ballots a full 34 days before the election. This is an extremely short amount of time which, for many associations, will not be workable.

In addition, this measure fails to recognize that association meetings involve more than the election of directors. Association meetings often deal with other matters such as bylaw amendments, the adoption of tax resolutions, the approval of borrowing, and (most recently) voting on whether to opt-out of the City and County of Honolulu’s fire sprinkler mandate. By eliminating voting by proxy, and by replacing that with limited ballots for elections that have fewer options, this measure

creates serious questions about how associations will be able to conduct business on other matters which are critical to the operation of an association.

**F. Section 9.**

The proposed change to HRS Section 124.5(e) will allow an election to be held if at least 20% of the eligible voters cast ballots. Not only would this allow a minority group of unit owners to elect directors, but it will violate many bylaw provisions that call for a higher quorum requirement or percentage vote for the election of directors. The legislature should not permit a small minority group of owners to seize control of an association in violation of the association's bylaws. This undermines the right of owners to dictate, via bylaws, how their directors are to be elected. Additionally, the change to HRS Section 124.5(e) is confusing. It states that an association shall distribute ballots at a meeting to eligible unit owners who have not yet voted, but that the ballot procedures as stated in HRS Section 514B-123(j) shall apply. HRS Section 514B-123(j) deals with the distribution of ballots by mail, not the distribution of ballots at a meeting.

The proposed change to HRS Section 514B-124.5(f) provides that a unit owner may not authorize any other person to vote on the owner's behalf, provided that a unit owner who needs assistance casting a ballot may obtain such assistance. This creates a problem because the ballots will be completed by owners in their own homes or outside of an association's presence, leaving an association with no way of knowing who actually completed the ballots. It ought to be made clear that associations may treat any ballot returned by an owner as having been completed by the owner.

The proposed change to HRS Section 514B-121(g) provides that the regular election of directors shall occur at the annual meeting and the first order of business on the agenda shall be to collect ballots not yet cast. This is confusing because it is not clear how to read this with HRS Section 514B-123(e) which provides for mail ballots, HRS Section 514B-121(b) which provides for electronic voting devices, and HRS Section 514B-121(e) which allows for electronic and machine voting. If the law is to be changed, it should be changed for a good purpose and in a clear and concise manner. It is also not clear what is meant by the "regular election" of directors. It also offers no guidance as to what is to be done when a director is removed by a vote of members at a meeting and the replacement is to be elected at that same meeting.

The change to HRS Section 514B-124.5(i) addresses ties in elections. It requires a Board to mail or deliver notice of runoff elections and ballots within 7 days of the tie and to hold a new election within 21 to 30 days of the election. As applied, this could give owners as little as 14 days to receive and return ballots, which may make it impossible for many owners, especially those who live in Canada or in far off places, to cast ballots in runoff elections because of delays in the mail.

The new HRS Section 514B-124.5(l) will make it a class C felony for any person who knowingly votes when the person is not entitled to vote. While everyone would agree that only those persons entitled to vote should vote, this provision, as drafted, would could make it a crime to engage in an innocent act because the word "knowingly" appears to modify the word "votes" and not the person's intent. If punishment is to be imposed it should be imposed against persons who knowingly vote "with full knowledge" that they are not eligible or entitled to vote.

The new HRS Section 514B-124.5(m) is confusing. There is no definition of “forgery of a ballot” and no reference to an “intent to defraud” which is an element of HR Section 708-853.

For the above reasons, I strongly oppose H.B. 176 and urge the committee to permanently defer it.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'M. Anne Anderson', written in a cursive style.

M. Anne Anderson

February 13, 2023

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE H.B.176** for the reasons set forth below.

Sections 514B-121, 123 and 124.5 are probably the most intricate, dense and complex provisions in Chapter 514B. These provisions have been tweaked and fine-tuned by the Legislature over the past several decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used the subject provisions to conduct thousands of association meetings. S.B. 729 essentially takes a sledgehammer and destroys the statutory scheme without good cause. The proposed changes will very likely result in unanticipated outcomes, challenged elections and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer H.B. 176 and appoint an advisory group of experts to study the proposed changes to ensure that the amendments are clear and unambiguous.

I have addressed issues with H.B. 176 below. However, I would note that H.B. 176 raises far more issues and problems than I have the time or space to point out in this testimony.

**A. Sections 1 through 5.**

Sections 1 through 5 of the bill will give the real estate commission the power to investigate violations of HRS Sections 514B-123 and 124.5 and even go so far as to state that the failure to comply with HRS Sections 514B-123 and 514B-124.5 shall constitute a misdemeanor punishable by a fine not to exceed \$10,000 or imprisonment for a term not to exceed one year, or both. Additionally it provides for civil penalties of up to \$10,000 per violation. It then goes on to revise HRS Sections 514B-123 and 514B-124.5 in a confusing manner, making it difficult for associations to understand what is required of them to comply.

**B. Sections 6 – 13 Removing References to Proxies.**

H.B. 176 will radically change the manner in which condominium associations conduct their meetings as it removes provisions on proxy voting. For the decades, owners have been allowed to vote at meetings through proxies. The proxy voting provisions had been in place for a long time before the Condominium Property Act was recodified in 2006. During that process, the proxy voting provisions in Chapter 514A were incorporated into Chapter 514B with few changes. Over the years, the proxy provisions have been refined.

The proxy provisions benefit associations by allowing associations to conduct association meetings with fewer than 50% of the owners present in person. To obtain a quorum, most association bylaws require the presence of at least a majority of the members, in person or by proxy, at association meetings. Associations typically obtain a quorum by allowing members to submit proxies for quorum purposes only, or to vote on their behalf. Even then, it is often difficult to obtain a quorum. Most owners do not attend meetings because they may be traveling or residing



elsewhere, owners simply choose not to attend, or owners' schedules do not permit them to attend association meetings.

Through the use of proxies, associations are able to hold meetings and vote on necessary items of business, including but not limited to elections. Elections are not the only items of business that require the vote of owners. Moreover, in person meetings have been an important part of the governance of condominium associations. At association meetings, reports are given to notify owners about, among other things, the financial position of the association, completed and planned projects, the status of the reserve accounts, and other matters. Owners are permitted to ask questions of the board and to raise issues of common interest to the owners. Owners have the right to make motions at association meetings.

Without the proxy voting provisions in Section 514B-123(b), many associations will find it impossible to obtain a quorum for association meetings. Associations will not be able to have owners approve tax resolutions and vote on other matters that are taken up at association meetings. The sense of community, trust and good will that are fostered by successful association meetings will be lost as meetings must be adjourned due to the lack of a quorum. Accordingly, the provisions allowing voting by proxy for the election of directors and the conduct of other business should be retained.

**C. Section 6 – Change to HRS Section 514B-106(g).**

The amendment to HRS Section 514B-106(g) is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burdens on condominium associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, H.B. 176 will do far more harm than good.

H.B. 176 is unnecessary because board members already have a statutory fiduciary duty to their associations. HRS Section 514B-106 provides that, "In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D."

Chapter 414D of the Hawaii Revised Statutes, the Hawaii Nonprofit Corporations Act, Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should read the governing documents, H.B. 176 will raise numerous problems for community associations and property management companies.

First, H.B. 176 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to retain board members' written certificates, in practice, imposing legal requirements for this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards. There are approximately 1,500 condominium associations registered in Hawaii. Although I am not aware of statistics on the total number of board positions for all condominium associations in Hawaii, the number of positions probably exceeds 10,000.

Second, like legislators, some board members remain in office for many years. H.B. 176 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Third, H.B. 176 will discourage many association members from serving on boards. Any director who fails to sign a written certificate will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability. Furthermore, in light of H.B. 176, by having to read the governing documents, board members will be implicitly required to understand all of the governing documents. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they read the governing documents.

Fourth, the provisions on the appointment of a member to temporarily fill a vacancy is nonsensical as the interim member has no obligation to comply with subsections (1), (2) and (3).

In summary, while this bill may have good intentions, it has not been drafted with sufficient clarity to serve a useful purpose. Instead, it will prove to be overly burdensome on associations and will lead to confusion and conflicts. Additionally, the administrative burden will add to the cost of operating an association at a time when many associations are struggling to deal with inflation.

#### **D. Section 7.**

The changes to HRS Section 514B-121(b) provide that a board shall establish reasonable procedures to provide for the secrecy and integrity of a unit owner's vote including "authentication" of each owner's identity and the validity of each electronic vote to ensure that the vote was not altered in transit. This provision may be well intended, but it offers no explanation of how the authentication is to be performed. If criminal sanctions apply to noncompliance, the legislature must at least offer a clear explanation of what constitutes compliance.

The new HRS Section 514B-121(b)(6) provides that any vote by an electronic voting device shall be limited to issues specifically identified in the electronic vote. However, nowhere does the section explain what the reference to “the electronic vote” means in this context.

HRS Section 514B-121(b) regarding electronic voting devices is not consistent with HRS Section 514B-121(e) regarding electronic or machine voting. It is impossible to determine what the difference is between an electronic voting device referred to in HRS Section 514B-121(b) and electronic or machine voting referred to in HRS Section 514B-121(e). The better approach would be to delete HRS Section 514B-121(b) in its entirety and avoid having two conflicting provisions.

#### **E. Section 8.**

Section 8 of this measure will impose new ballot requirements for the election of directors. It also contains conflicting provisions on ballot voting. It amends HRS Section 514B-123(b) to strike proxy voting but continues to allow for voting by mail and electronic transmission. However, it amends HRS Section 514B-123(e) to require that directors be elected by ballot sent by mail, which conflicts with voting by electronic transmission. This also conflicts with HRS Section 514B-121(b) and Section 514B-121(e) found in Section 7 of the bill which allow for electronic meetings, electronic voting devices, and electronic and machine voting.

The time requirements to distribute and return ballots are not reasonable and will result in disenfranchising many voters. This measure will require that ballots be sent to owners between 21 and 34 days before the election. The owner must then return the ballot by no later than 4:30 p.m. on the second business day before the annual meeting. This will leave many owners with very little time to receive, review, and return ballots to their association’s secretary or managing agent. This is especially true for owners with mailing addresses in foreign countries due to delays in international mail.

This measure will prohibit members from making nominations from the floor at annual meetings which is a very common practice. It also prohibits write-in candidates, which is allowed by Robert’s Rules of Order. As a result, this measure will unfairly disenfranchise association members because it will create fewer options and more restrictions on voting for candidates.

This measure also requires that unit owners or board members who wish to use association funds to solicit votes (presumably to be added on a ballot) must submit a statement to the board 40 days before the election. This allows less than six days for the association to review each statement, to add names of candidates to a ballot, and to mail out the ballot if they wish to send the second notice and written ballots a full 34 days before the election. This is an extremely short amount of time which, for many associations, will not be workable.

In addition, this measure fails to recognize that association meetings involve more than the election of directors. Association meetings often deal with other matters such as bylaw amendments, the adoption of tax resolutions, the approval of borrowing, and (most recently) voting on whether to opt-out of the City and County of Honolulu’s fire sprinkler mandate. By eliminating voting by proxy, and by replacing that with limited ballots for elections that have fewer options, this measure

creates serious questions about how associations will be able to conduct business on other matters which are critical to the operation of an association.

**F. Section 9.**

The proposed change to HRS Section 124.5(e) will allow an election to be held if at least 20% of the eligible voters cast ballots. Not only would this allow a minority group of unit owners to elect directors, but it will violate many bylaw provisions that call for a higher quorum requirement or percentage vote for the election of directors. The legislature should not permit a small minority group of owners to seize control of an association in violation of the association's bylaws. This undermines the right of owners to dictate, via bylaws, how their directors are to be elected. Additionally, the change to HRS Section 124.5(e) is confusing. It states that an association shall distribute ballots at a meeting to eligible unit owners who have not yet voted, but that the ballot procedures as stated in HRS Section 514B-123(j) shall apply. HRS Section 514B-123(j) deals with the distribution of ballots by mail, not the distribution of ballots at a meeting.

The proposed change to HRS Section 514B-124.5(f) provides that a unit owner may not authorize any other person to vote on the owner's behalf, provided that a unit owner who needs assistance casting a ballot may obtain such assistance. This creates a problem because the ballots will be completed by owners in their own homes or outside of an association's presence, leaving an association with no way of knowing who actually completed the ballots. It ought to be made clear that associations may treat any ballot returned by an owner as having been completed by the owner.

The proposed change to HRS Section 514B-121(g) provides that the regular election of directors shall occur at the annual meeting and the first order of business on the agenda shall be to collect ballots not yet cast. This is confusing because it is not clear how to read this with HRS Section 514B-123(e) which provides for mail ballots, HRS Section 514B-121(b) which provides for electronic voting devices, and HRS Section 514B-121(e) which allows for electronic and machine voting. If the law is to be changed, it should be changed for a good purpose and in a clear and concise manner. It is also not clear what is meant by the "regular election" of directors. It also offers no guidance as to what is to be done when a director is removed by a vote of members at a meeting and the replacement is to be elected at that same meeting.

The change to HRS Section 514B-124.5(i) addresses ties in elections. It requires a Board to mail or deliver notice of runoff elections and ballots within 7 days of the tie and to hold a new election within 21 to 30 days of the election. As applied, this could give owners as little as 14 days to receive and return ballots, which may make it impossible for many owners, especially those who live in Canada or in far off places, to cast ballots in runoff elections because of delays in the mail.

The new HRS Section 514B-124.5(l) will make it a class C felony for any person who knowingly votes when the person is not entitled to vote. While everyone would agree that only those persons entitled to vote should vote, this provision, as drafted, would could make it a crime to engage in

February 13, 2023

Page 6

an innocent act because the word “knowingly” appears to modify the word “votes” and not the person’s intent. If punishment is to be imposed it should be imposed against persons who knowingly vote “with full knowledge” that they are not eligible or entitled to vote.

The new HRS Section 514B-124.5(m) is confusing. There is no definition of “forgery of a ballot” and no reference to an “intent to defraud” which is an element of HR Section 708-853.

For the above reasons, I strongly oppose H.B. 176 and urge the committee to permanently defer it.

Respectfully submitted,

A handwritten signature in cursive script that reads "Paul A. Ireland Koftinow". The signature is written in black ink and is positioned above the printed name.

Paul A. Ireland Koftinow

**HB-176**

Submitted on: 2/13/2023 8:11:56 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Julie Wassel	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE H.B.176 and join in the testimony submitted by M. Anne Anderson, Lance S. Fujisaki, and Paul A. Ireland Koftinow.

Respectfully submitted:

Julie Wassel

**HB-176**

Submitted on: 2/13/2023 10:32:03 PM

Testimony for HSG on 2/15/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dale A. Head	Individual	Support	Remotely Via Zoom

Comments:

*Aloha CPC, Chair Mark M. Nakashime & Vice Chair Jackson D. Sayama*

*Aloha HSG, Chair Troy N. Hashimoto & Vice Chair Micah P.K. Aui*

***HB176 merits a point by point response. I do SUPPORT this 'Omnibus' Bill.***

1. Expands the Real Estate Commission enforcement authority to include violations of requirements for Association meetings and Board of Director Elections.

This letter from DCCA, issued Wednesday, February 3, 2021, lays out why the Department will not investigate complaints against companies that 'manage' HOAs (Home Owners Associations).

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

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

***Response - So, if the 2023 Legislature is oriented, leadership wise toward Consumer Protection, then their authority needs to be expanded. Otherwise they make excuses and blame 'lawmakers' for their inability to investigate fraud.***

2. Requires newly elected or appointed condominium association Board members to certify in writing compliance with specified duties and obligations.

***Response - This is a well intentioned piece of psychology, similar to candidates for election to the Legislature, to take an oath to defend the US and Hawaii Constitutions. Well, at my age, 74, have never heard of any lawmaker being rebuked for not doing so. If HOA Board members sign***

*a paper that they have read their duties and obligations to perform, we will have to take them at their word.*

3. Clarifies electronic voting device procedures.

**Response** - *This is useful for voting in modern fashion, other than US Mail.*

4. Eliminates proxy voting for condominium associations.

**Response** - Each time an HOA member has done an 'after election' audit of documents, and found irregularities, such as the Property manager funneling dozens and hundreds of 'proxy/votes' to people of his choice, which alters the outcome, moving candidates with low support from owners to 'the front of the line' where he declares them winners, this is outright fraud, election theft. And DCCA refuses to do anything about it. Note - Signed 'Election Certificates' and 'Official Minutes' NEVER reflect the metrics of 'how many' proxies were assigned to the Board. As hiring a private practice attorney and going to Civil Court is super expensive, that never happens. So, the way to stop 'proxy abuse' is ban them in favor of ballots. And, it is a conflict of interest for companies which handle HOA funds to also be involved in elections, in my opinion. It is a 'no brainer'.

5. Establishes additional requirements and procedures for association meetings and board of directors elections, including notices of elections, notice of intent to run for election, ballots, and runoff elections.

**Response** - *Yes, this is surely desirable, but, it brings to mind the old adage - 'You can't legislate honesty'.*

6. Establishes penalties for improper voting and forgery of ballot envelopes.

**Response** - *This laudable concept cannot happen without either expansion of DCCA authority, or, establishment of an Office of Ombudsman.*

*In closing, I should not have to say this, but, every Legislator without exception was elected by voters who believed what they said. And, as our Legislature is mostly dominated by one party, I ask you to respect the 'Equal Protection Clause' put into the 14th Amendment after the Civil War.*

*HOA members pay taxes just as surely as those good folks with better incomes who can afford a detached home. It really grates on some of us to be treated as '2nd class' citizens.*

*Please pass **HB176** Respectfully, **Dale Arthur Head** (dale.head@aol.com) Monday 13 February 2023 @ 10:30pm*



Lourdes Scheibert  
2/14/2023

Committee on Housing: Chair Rep Troy Hashimoto, Vice Chair Micah Aiu, Rep: Darius Kila, Lisa Kitagawa, Lisa Marten, Richard Onishi, Chris Todd and Lauren Matsumoto

I support HB176

An educated condominium board of directors is a priority for meaningful self-governance and a peaceful community.

I have attended many education programs to learn about Condominium management and any information I could learn from. Good information and education is provided by the condominium education trust fund. You can find information on the Real Estate Commissions website and links to videos & articles.

Two publications that stands out for me:

- 1) Milton M. Motooka, ESQ. 'Simple Steps to Avoid Lawsuits', Ten Tips for Avoiding Litigation and What you Can Do.
- 2) CAI Hawaii Bulletin 2009 'Stupid Things Board Members Say'

Motooka's advise coupled with CAI Hawaii 2009 publication recognizes & supports that board directors need education & certification as outlined in HB176. In my opinion.

Sue Savio, Insurance Associates as a speaker for CAI & HCCA's programs say lawsuits by condominium owners are on the rise. The increase of paid out Directors & Officers insurance claims in Hawaii per capita is high in the nation. Blaring indicator for HB176.

I support HB176, eliminating the proxy vote to direct electronic voting.

Fair elections in condo associations start with well intentioned people and a well balanced board who understand and apply laws correctly without personal bias. In a perfect world this would happen. Law makers also need to understand how these laws impact condo communities and when it is necessary to adjust law to better serve their citizens fairly and effectively. Both go hand in hand.

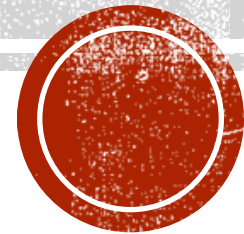
Thank-you,

Lourdes Scheibert  
A Condo Owner in Kakaako

Attachments: Simple Steps to Avoid Lawsuits  
Stupid Things Board Members Say

# **SIMPLE STEPS TO AVOID LAWSUITS**

**Milton M. Motooka, Esq.  
Motooka & Rosenberg**



# **III. TEN TIPS FOR AVOIDING** **LITIGATION**



# **TEN TIPS FOR AVOIDING LITIGATION**

**(BETTER KNOWN AS THE TEN COMMANDMENTS FOR LIFE WITHOUT LAWYERS)**

1. Do not become a director unless you have and will spend the time required to do the job.
2. Be involved in the operation of the Association and treat its operation as the operation of a business.
3. Be familiar with the project documents and understand the Association's responsibilities, authority and limitations.



# **TEN TIPS FOR AVOIDING LITIGATION**

**(BETTER KNOWN AS THE TEN COMMANDMENTS FOR LIFE WITHOUT LAWYERS)**

4. When making decisions, carefully review the information provided before proceeding. Do not blindly accept information provided. If necessary, the Board should do independent investigations.
5. When appropriate, seek the advice of professionals.
6. Decisions should be based on what is in the best interest of the Association – not what is “popular,” or what is best for you.



# **TEN TIPS FOR AVOIDING LITIGATION**

**(BETTER KNOWN AS THE TEN COMMANDMENTS FOR LIFE WITHOUT LAWYERS)**

7. Select and then support good management.
8. Do not accept nor expect special treatment.
9. Avoid even the appearance of impropriety.
10. Do not serve as a director unless the project documents have adequate indemnification language and Directors' and Officers' liability coverage and has it in place.



# **WHAT YOU CAN DO**

1. Win in the document drafting room and your board room, not the court room.
2. All contracts should be reviewed by counsel prior to executing them. When appropriate, have consultants assist you in drafting the specifications that contractors will be bidding on to ensure that all contractors are bidding on the same specifications. It is sometimes necessary to retain a consultant to monitor the work being performed.





## PRESIDENT'S MESSAGE

Aloha!

Aloha and Mahalo again for all of your kind comments regarding our February 2009 newsletter and again, I would like to thank our Newsletter's Committee Chairperson, Ms. Lillian McCarthy and her team, as well as Ms. Lindsay Green, our Chapter's Executive Director, for all of their efforts in publishing our CAI Hawaii Chapter's Newsletter. Also, a big mahalo to our newsletter contributors, who have provided us over the years with excellent articles that have helped us all do a better job in taking care of our associations and homes. We are always looking for good articles so if you are interested in submitting an article for your newsletter, please email it to us at [caihawaii@hawaiiintel.net](mailto:caihawaii@hawaiiintel.net) and we will pass it on to our Newsletter Committee for publication.

Our encore CAI presentation on "Navigating through Turbulence to Successful Annual Meetings" was held in Kona, Hawaii on February 22, 2009 and was another success for our Programs Committee by providing timely and educational seminars. I want to thank our panel of speakers, Mr. Steve Glanstein, a Professional Registered Parliamentarian; Ms. Linda Morabito, PCAM®, Vice President for Marketing, Hawaii Operations for Certified Management, Inc. and Mr. Milton Motooka, Esq., from the law firm of Motooka Yamamoto & Revere as well as our Programs Committee for organizing and conducting such a well-received seminar that provided extremely valuable information for all of us on how to prepare, plan and to conduct a successful annual meeting.

*continued on page 2*

## STUPID THINGS BOARD MEMBERS SAY

By Lillian McCarthy, AMS®, PCAM®

In the past few months the following are stupid things board members have said. Some of these statements will leave your mouth hanging, others will clearly show some board members' lack of responsibility and understanding of the duties and the members they service. Board members need to be very cautious in what they say and how they say it. Board members are standard bearers and need to think before speaking. Always keep a cool head and do the right thing.

"Let's vote by e-mail. We can ratify it at our board meeting."

*This statement and action if permitted violates the statutes which provide for open deliberation with participation by all members of the association.*

"I don't understand what the big deal is about following the rules."

*The statutes were written to protect the owners and rules are meant to be followed. This board member should resign.*

"Owners are not permitted to speak during the board meeting."

*This is a clear violation of the statute which permits all owners to participate in all deliberation, with the exception of executive session, unless a quorum of the board votes otherwise. Why does the board want to stifle owner participation?*

"Let's fudge the reserve study." *An honest attempt must be made to ensure the accuracy of the reserve study. The statute was written to provide for owners to contribute their fair share to the capital improvements for the next twenty years.*

"Can't you make the maintenance fee increase smaller." *Maintenance fee increases are determined by the operating budget and reserve study needs. To "make the maintenance fee increase smaller" means to manipulate the budget and/or reserve study number which could place the association at financial risk.*

"We didn't post notice of the meeting because it was raining." *The statute requires notice be posted in prominent locations 72 hours prior to the meeting. Boards that do not adhere to the posting notice should be aware that if the meeting is conducted, all decisions made at the meeting may be challenged and invalidated.*

"I don't like the legal opinion. Can't we disregard it?" *A legal opinion should not be disregarded. Boards should keep in mind that a legal opinion is a professional opinion and whether the board appreciates the opinion or not, disregarding the opinion may be considered not following the good business judgment rule and in the case of a conflict, the board members may be held personally liable.*

"We need a lawsuit. Let's have a lawsuit." *This board member should resign and has no right serving the community as a board of director. To encourage lawsuits and not resolve conflicts without attorneys, make poor business practice.*

*continued on page 4*



## STUPID THINGS BOARD MEMBERS SAY *continued from page 1*

"If we run short in our budget, we can special assess."

*A special assessment is not a tool that the board should be using "just in case." Boards need to understand that there are criteria that must be followed and a resolution passed before a special assessment may be levied against the owners, unless the owners first approve of the special assessment.*

"Build a special assessment into the budget."

*Budgets cannot be crafted with a special assessment built in. It is also very problematic for boards to special assess often. Special assessments may be an indication that the budget was not properly crafted.*

"If we have a maintenance fee increase the owners' will get mad at us."

*The Board normally has the responsibility to make sure that enough revenues are collected so that the expenses are covered. To be more concerned that the owners will get mad than to ensure the financial health of the association is problematic.*

"What is fiduciary duty?"

*Any board member that does not know the definition of "fiduciary" needs to look up the meaning, understand the meaning, and acknowledge that this higher duty of trust is a prerequisite of the position. Board members need to subordinate their wants for the good of the entire membership and not violate this level of trust.*

"I didn't know the resident manager/general manager did not have a fiduciary duty."

*The resident or general manager has a duty of loyalty to the company but does not have a fiduciary duty to the membership.*

"Since I can't make the board meeting, I'll vote by proxy."

*The statutes do not permit board members vote by proxy.*

"Don't file a workers' comp claim even though the doctors said the injury is work related."

*Why would a board member want to intentionally violate the law? A company has seven days to file a workers' comp claim and if the medical provider determines the injury or illness is work related, do not deny the employee the right to file the claim.*

"Don't micromanage. Let the resident manager decide how much of a raise each employee should receive."

*The board has a duty to set up the structure and ensure all employees are treated equally and fairly. THERE MUST BE OVERSIGHT and the board cannot delegate responsibility.*

"We don't need a quorum for the board meeting. Let's have the meeting anyway."

*The governing documents normally dictate what percent is quorum. Do not attempt to have a board meeting and make decisions without a quorum present. Any decision made by the board of directors when there is no quorum can be challenged and invalidated.*

"The property manager should be buying the toilet paper for our employees and doing the job of the resident manager when he is out ill."

*The property manager has his/her own job. The board of directors is responsible to ensure that there is a manager in charge and supervision of the employees (if any) is provided. Do not expect the property manager to fill in for the resident manager.*

"Shut up and sit down."

*Never tell owners to shut up and sit down. Not only is this disrespectful, it lacks common*



courtesy; hear the owner out and look for an amiable solution.

“The President doesn’t have a vote.” According to Robert’s Rules, if the chairperson (normally the President) is part of the assembly, then the president does have a vote. By chairing the meeting, the President does not give up his/her right to vote.

“I don’t like that owner. Let’s not approve his alteration.” This is clearly discrimination and subject to a potential lawsuit including a Hawaii Civil Rights Complaint. Board members must always place their own feelings aside and do what is right regardless of how they feel about the owner.

“I’m not going to give you my name.” Any board member that does not want to give another owner his/her name should resign. The vote of each board member must be recorded in the minutes so there is no reason to not stand behind your name.

“We don’t have the authority to amend the House Rules but none of the owners are smart enough to know this. Let’s just do it and if we get caught then we will deal with it.” To deliberately do something that you are empowered to do is wrong. To take advantage of the lack of knowledge owners may have is wrong. Board members must follow the correct process and do the right thing.

“Waive my late fee.” Board members do not have special privileges and all owners, regardless of whether you are a board member or not, are to be treated alike. If board members expect their late fees to be waived, then all owners should expect the same courtesy.

**About the author:** Lillian McCarthy works for Hawaiiana Management as a Management Executive. Lillian may be contacted at (808) 792-0506 or by e-mail at lillianm@hmcmtg.com.

Large empty rectangular box on the right side of the page, possibly for a signature or additional notes.

Large empty rectangular box on the bottom left side of the page, containing three smaller empty rectangular boxes at the bottom, possibly for a signature or additional notes.

February 13, 2023

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE H.B.176** for the reasons set forth below.

Sections 514B-121, 123 and 124.5 are probably the most intricate, dense and complex provisions in Chapter 514B. These provisions have been tweaked and fine-tuned by the Legislature over the past several decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used the subject provisions to conduct thousands of association meetings. S.B. 729 essentially takes a sledgehammer and destroys the statutory scheme without good cause. The proposed changes will very likely result in unanticipated outcomes, challenged elections and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer H.B. 176 and appoint an advisory group of experts to study the proposed changes to ensure that the amendments are clear and unambiguous.

I have addressed issues with H.B. 176 below. However, I would note that H.B. 176 raises far more issues and problems than I have the time or space to point out in this testimony.

**A. Sections 1 through 5.**

Sections 1 through 5 of the bill will give the real estate commission the power to investigate violations of HRS Sections 514B-123 and 124.5 and even go so far as to state that the failure to comply with HRS Sections 514B-123 and 514B-124.5 shall constitute a misdemeanor punishable by a fine not to exceed \$10,000 or imprisonment for a term not to exceed one year, or both. Additionally it provides for civil penalties of up to \$10,000 per violation. It then goes on to revise HRS Sections 514B-123 and 514B-124.5 in a confusing manner, making it difficult for associations to understand what is required of them to comply.

**B. Sections 6 – 13 Removing References to Proxies.**

H.B. 176 will radically change the manner in which condominium associations conduct their meetings as it removes provisions on proxy voting. For the decades, owners have been allowed to vote at meetings through proxies. The proxy voting provisions had been in place for a long time before the Condominium Property Act was recodified in 2006. During that process, the proxy voting provisions in Chapter 514A were incorporated into Chapter 514B with few changes. Over the years, the proxy provisions have been refined.

The proxy provisions benefit associations by allowing associations to conduct association meetings with fewer than 50% of the owners present in person. To obtain a quorum, most association bylaws require the presence of at least a majority of the members, in person or by proxy, at association meetings. Associations typically obtain a quorum by allowing members to submit proxies for quorum purposes only, or to vote on their behalf. Even then, it is often difficult to obtain a quorum. Most owners do not attend meetings because they may be traveling or residing

elsewhere, owners simply choose not to attend, or owners' schedules do not permit them to attend association meetings.

Through the use of proxies, associations are able to hold meetings and vote on necessary items of business, including but not limited to elections. Elections are not the only items of business that require the vote of owners. Moreover, in person meetings have been an important part of the governance of condominium associations. At association meetings, reports are given to notify owners about, among other things, the financial position of the association, completed and planned projects, the status of the reserve accounts, and other matters. Owners are permitted to ask questions of the board and to raise issues of common interest to the owners. Owners have the right to make motions at association meetings.

Without the proxy voting provisions in Section 514B-123(b), many associations will find it impossible to obtain a quorum for association meetings. Associations will not be able to have owners approve tax resolutions and vote on other matters that are taken up at association meetings. The sense of community, trust and good will that are fostered by successful association meetings will be lost as meetings must be adjourned due to the lack of a quorum. Accordingly, the provisions allowing voting by proxy for the election of directors and the conduct of other business should be retained.

**C. Section 6 – Change to HRS Section 514B-106(g).**

The amendment to HRS Section 514B-106(g) is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burdens on condominium associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, H.B. 176 will do far more harm than good.

H.B. 176 is unnecessary because board members already have a statutory fiduciary duty to their associations. HRS Section 514B-106 provides that, "In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D."

Chapter 414D of the Hawaii Revised Statutes, the Hawaii Nonprofit Corporations Act, Sections 414D-149 and 414D-155, impose duties upon directors and officers, respectively, to discharge their duties in good faith; in a manner that is consistent with their duty of loyalty to the association; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director or officer reasonably believes to be in the best interests of the corporation. These requirements are incorporated by reference in Chapter 514B, and apply to all directors and officers of condominium associations.

Although an ordinarily prudent person serving on an association board should read the governing documents, H.B. 176 will raise numerous problems for community associations and property management companies.

First, H.B. 176 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to retain board members' written certificates, in practice, imposing legal requirements for this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards. There are approximately 1,500 condominium associations registered in Hawaii. Although I am not aware of statistics on the total number of board positions for all condominium associations in Hawaii, the number of positions probably exceeds 10,000.

Second, like legislators, some board members remain in office for many years. H.B. 176 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Third, H.B. 176 will discourage many association members from serving on boards. Any director who fails to sign a written certificate will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability. Furthermore, in light of H.B. 176, by having to read the governing documents, board members will be implicitly required to understand all of the governing documents. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they read the governing documents.

Fourth, the provisions on the appointment of a member to temporarily fill a vacancy is nonsensical as the interim member has no obligation to comply with subsections (1), (2) and (3).

In summary, while this bill may have good intentions, it has not been drafted with sufficient clarity to serve a useful purpose. Instead, it will prove to be overly burdensome on associations and will lead to confusion and conflicts. Additionally, the administrative burden will add to the cost of operating an association at a time when many associations are struggling to deal with inflation.

#### **D. Section 7.**

The changes to HRS Section 514B-121(b) provide that a board shall establish reasonable procedures to provide for the secrecy and integrity of a unit owner's vote including "authentication" of each owner's identity and the validity of each electronic vote to ensure that the vote was not altered in transit. This provision may be well intended, but it offers no explanation of how the authentication is to be performed. If criminal sanctions apply to noncompliance, the legislature must at least offer a clear explanation of what constitutes compliance.

The new HRS Section 514B-121(b)(6) provides that any vote by an electronic voting device shall be limited to issues specifically identified in the electronic vote. However, nowhere does the section explain what the reference to “the electronic vote” means in this context.

HRS Section 514B-121(b) regarding electronic voting devices is not consistent with HRS Section 514B-121(e) regarding electronic or machine voting. It is impossible to determine what the difference is between an electronic voting device referred to in HRS Section 514B-121(b) and electronic or machine voting referred to in HRS Section 514B-121(e). The better approach would be to delete HRS Section 514B-121(b) in its entirety and avoid having two conflicting provisions.

#### **E. Section 8.**

Section 8 of this measure will impose new ballot requirements for the election of directors. It also contains conflicting provisions on ballot voting. It amends HRS Section 514B-123(b) to strike proxy voting but continues to allow for voting by mail and electronic transmission. However, it amends HRS Section 514B-123(e) to require that directors be elected by ballot sent by mail, which conflicts with voting by electronic transmission. This also conflicts with HRS Section 514B-121(b) and Section 514B-121(e) found in Section 7 of the bill which allow for electronic meetings, electronic voting devices, and electronic and machine voting.

The time requirements to distribute and return ballots are not reasonable and will result in disenfranchising many voters. This measure will require that ballots be sent to owners between 21 and 34 days before the election. The owner must then return the ballot by no later than 4:30 p.m. on the second business day before the annual meeting. This will leave many owners with very little time to receive, review, and return ballots to their association’s secretary or managing agent. This is especially true for owners with mailing addresses in foreign countries due to delays in international mail.

This measure will prohibit members from making nominations from the floor at annual meetings which is a very common practice. It also prohibits write-in candidates, which is allowed by Robert’s Rules of Order. As a result, this measure will unfairly disenfranchise association members because it will create fewer options and more restrictions on voting for candidates.

This measure also requires that unit owners or board members who wish to use association funds to solicit votes (presumably to be added on a ballot) must submit a statement to the board 40 days before the election. This allows less than six days for the association to review each statement, to add names of candidates to a ballot, and to mail out the ballot if they wish to send the second notice and written ballots a full 34 days before the election. This is an extremely short amount of time which, for many associations, will not be workable.

In addition, this measure fails to recognize that association meetings involve more than the election of directors. Association meetings often deal with other matters such as bylaw amendments, the adoption of tax resolutions, the approval of borrowing, and (most recently) voting on whether to opt-out of the City and County of Honolulu’s fire sprinkler mandate. By eliminating voting by proxy, and by replacing that with limited ballots for elections that have fewer options, this measure

creates serious questions about how associations will be able to conduct business on other matters which are critical to the operation of an association.

**F. Section 9.**

The proposed change to HRS Section 124.5(e) will allow an election to be held if at least 20% of the eligible voters cast ballots. Not only would this allow a minority group of unit owners to elect directors, but it will violate many bylaw provisions that call for a higher quorum requirement or percentage vote for the election of directors. The legislature should not permit a small minority group of owners to seize control of an association in violation of the association's bylaws. This undermines the right of owners to dictate, via bylaws, how their directors are to be elected. Additionally, the change to HRS Section 124.5(e) is confusing. It states that an association shall distribute ballots at a meeting to eligible unit owners who have not yet voted, but that the ballot procedures as stated in HRS Section 514B-123(j) shall apply. HRS Section 514B-123(j) deals with the distribution of ballots by mail, not the distribution of ballots at a meeting.

The proposed change to HRS Section 514B-124.5(f) provides that a unit owner may not authorize any other person to vote on the owner's behalf, provided that a unit owner who needs assistance casting a ballot may obtain such assistance. This creates a problem because the ballots will be completed by owners in their own homes or outside of an association's presence, leaving an association with no way of knowing who actually completed the ballots. It ought to be made clear that associations may treat any ballot returned by an owner as having been completed by the owner.

The proposed change to HRS Section 514B-121(g) provides that the regular election of directors shall occur at the annual meeting and the first order of business on the agenda shall be to collect ballots not yet cast. This is confusing because it is not clear how to read this with HRS Section 514B-123(e) which provides for mail ballots, HRS Section 514B-121(b) which provides for electronic voting devices, and HRS Section 514B-121(e) which allows for electronic and machine voting. If the law is to be changed, it should be changed for a good purpose and in a clear and concise manner. It is also not clear what is meant by the "regular election" of directors. It also offers no guidance as to what is to be done when a director is removed by a vote of members at a meeting and the replacement is to be elected at that same meeting.

The change to HRS Section 514B-124.5(i) addresses ties in elections. It requires a Board to mail or deliver notice of runoff elections and ballots within 7 days of the tie and to hold a new election within 21 to 30 days of the election. As applied, this could give owners as little as 14 days to receive and return ballots, which may make it impossible for many owners, especially those who live in Canada or in far off places, to cast ballots in runoff elections because of delays in the mail.

The new HRS Section 514B-124.5(l) will make it a class C felony for any person who knowingly votes when the person is not entitled to vote. While everyone would agree that only those persons entitled to vote should vote, this provision, as drafted, would could make it a crime to engage in

February 23, 2023

Page 6

an innocent act because the word “knowingly” appears to modify the word “votes” and not the person’s intent. If punishment is to be imposed it should be imposed against persons who knowingly vote “with full knowledge” that they are not eligible or entitled to vote.

The new HRS Section 514B-124.5(m) is confusing. There is no definition of “forgery of a ballot” and no reference to an “intent to defraud” which is an element of HR Section 708-853.

For the above reasons, I strongly oppose H.B. 176 and urge the committee to permanently defer it.

Respectfully submitted,

Lance Fujisaki



**HB-176**

Submitted on: 2/14/2023 7:38:36 AM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Joyce Baker	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE H.B.176 and join in the testimony submitted by M. Anne Anderson, Lance S. Fujisaki, and Paul A. Ireland Koftinow.

Respectfully submitted,

Joyce Baker

**HB-176**

Submitted on: 2/14/2023 8:22:40 AM

Testimony for HSG on 2/15/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Michael Ayson	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill.

Dear Representative Hashimoto, Chair, Representative Aiu, Vice Chair, and Members of the Committee:

I strongly oppose H.B.176. The proposed changes to HRS 514B-121, 123, and 124.5 will very likely result in unanticipated outcomes, challenged elections and litigation. If the statutory scheme requires a major overhaul, the Legislature should defer the bill and assemble an advisory group to study the proposed changes.

Sections 1 through 5 of the bill give the real estate commission investigative powers to review violations and authorize fines or imprisonment and civil penalties.

Sections 6 through 13 remove provisions allowing proxy voting. Proxy provisions benefit associations by allowing the association to conduct business with less than 50% of the ownership attending in person. It is often difficult to obtain a quorum and the proposed changes make it more difficult.

The proposed changes to HRS Section 514B-106(g) are unnecessary because board members already have a statutory fiduciary duty to their associations. Imposing legal requirements for the record keeping necessary for certification of Board members is burdensome and will discourage many association members from serving on Boards.

Changes to HRS 514B-121(b) are burdensome in requiring Boards to establish procedures to authenticate owners' identity and the validity of each electronic vote. The proposed changes lack any explanation as to how the authentication should be performed.

Section 8 seeks to impose new ballot requirements for electing directors. The time requirements are not reasonable and will serve to disenfranchise owner voters as many owners will have little time to receive, review, and return ballots. The measure will prohibit members from making nominations from the floor at annual meetings and prohibit write-in candidates, which will unfairly disenfranchise association members by reducing their options and increasing restrictions. By eliminating proxy voting and limiting the ballot options, the legislation will hamper the associations' ability to conduct business.

Section 9 which allows an election if 20% of eligible voters cast ballots is contra to many bylaw provisions and would allow a minority of owners to control the association in violation of the governing documents.

Changes to HRS 514B-124.5(I) contain unreasonable time restrictions in the event of ties in elections which can impede participation by many owners.

These are just a few reasons the committee should permanently defer this bill. Thank you for your consideration.

Sincerely - /s/ Pam Schell



HB176, RELATING TO CONDOMINIUM ASSOCIATIONS  
TESTIMONY IN SUPPORT WITH AMENDMENTS  
February 14, 2023

**LATE**

Rep. Troy N. Hashimoto, Chair  
Rep Micah P. K. Aiu, Vice Chair  
Members of the Committee on Housing

Aloha,

At the outset, I wish to thank Rep Adrian Tam for sponsoring this legislation, though, I am disappointed that more legislators did not sign on to it, especially recognizing the numerous voters who reside in condominiums. It's been a challenging journey for years for condominium homeowners to have their concerns heard by the legislature and to see any meaningful legislation passed.

For this particular bill, while well-intended, I doubt its passage, given the many proposed amendments to law covering a myriad of concerns. Still, I am hopeful that legislators serving on your committee will find opportunity for introducing further legislative proposals to address the concerns of condominium homeowners.

Having said the above, here are my comments: Support HB176 with amendments especially those provisions concerning proxies and the authorities to the Real Estate Commission Enforcement Authority to strengthen their authorities to deal with violations of HRS 514B, and the elimination of proxies. Especially support the provisions of section 514B-106, Board; Powers and Duties, sections (a) (b) and (g);

Amendments proposed:

Regarding that provision of the bill concerning 514B-123, Association Meetings, Voting; Ballots; Notice of Election, section (3), amend to change "alphabetical" to "random" order. As reads: "Shall list all eligible candidates in alphabetical order by last name, without indicating whether any candidates are incumbents."

Amend to read: "Shall list all eligible candidates in ~~alphabetical~~ random order by last name, without indicating whether any candidates are incumbents."

Regarding that provision of the bill concerning 514B-123, Association Meetings, Voting; Ballots; Notice of Election, section (i), delete in its entirety because duplicative of section (g). Section (i) reads, "If a member of the board, in the member's individual capacity, seeks to solicit votes using association funds, the board member shall submit written notice of intent to the board no later than forty days before the election, accompanied by a written statement to the board indicating the member's reasons for wanting to receive votes." Section (g) reads, "(g) A unit owner who wishes to serve on the board shall submit written notice of intent to the board or managing agent no later than forty days before the election, accompanied by a written statement to the board of the unit owner's qualifications to serve on the board or reasons for

wanting to receive votes. The statement shall be limited to black text on white paper and shall not exceed one single-sided eight and one-half inches by eleven inches page.”

Mahalo for your consideration of my testimony in support with amendments.

Marilyn L. Khan  
Condominium Homeowners, Kaka’ako