

**HAWAII FIRST REALTY LLC  
RB-19713  
4167 Kaimamahila Street  
Honolulu, HI 96816**

February 4, 2024

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
Senator Jarrett Keohokalole, Chair  
Senator Carol Fukanaga, Vice Chair

**Opposition to SB 2404**

Dear Chair Keohokalole and Committee Members,

My name is Richard Emery with a 30-year history of condominium management. I am a member of the National Association of Parliamentarians and have attended many condominium annual meetings.

An organization's governing documents define requirements for an annual meeting and provide representation by proxy. This is true for for-profit, not-for profit, and associations including condominiums across the USA.

A proxy is a voluntary right of a stakeholder (condo owner) to appoint their authorized representative at the meeting. It is a personal choice. An owner has many choices including the Board of Directors. It is common for organizations to include the Board of Directors as an option. In the end, it is the Owner's voluntary choice. Hawaii prides itself on its respect for rights and this proposal is based on a few owners that ignore a stakeholder's rights.

Any association can make changes by owners' amending its own governing documents. The owners of an association should make a decision of change, not the legislature.

It is often forgot beyond the election the regular business of an association to include:

- Approval of minutes. Important as part of real estate sales.
- Approval of tax resolution to preserve its nonprofit tax status.
- Approval of resolutions to repair or maintain the building based typically on a design professional report.
- Approval of New Business proposed by an Owner or the Board.

Often Owner initiatives are unknown until the meeting. Often candidates for election are unknown until nominated at the meeting. At times interested candidates withdraw before the election. Then in some cases there is cumulative voting.

The industry acquired a great deal of experience during the pandemic. It was difficult to verify that the person voting was an owner and authorized to vote. Mail voting ignores the debate held at the meeting when pros and cons are discussed. It is more costly to conduct voting by mail.

I strongly oppose SB2404 for the reasons stated. A proxy is an owner's private right that should not be impaired.

Sincerely,

Richard Emery, RB-17147, RS-8

HAWAII LEGISLATIVE  
ACTION COMMITTEE

  
**community**  
ASSOCIATIONS INSTITUTE

P.O. Box 976  
Honolulu, Hawaii 96808

January 4, 2024

The Honorable Senator Jarrett Keohokalole, Chair  
Senate Committee on Commerce and Consumer Protection  
415 South Beretania Street, Room 229  
Honolulu, HI 96813

**RE: SB 2404 - Relating to Condominiums**

Dear Chair Keohokalole and members of the Committee:

The Community Associations Institute (CAI) is a national and statewide organization of individuals involved in the operation of community associations, including homeowners, directors, managers and business partners of community associations. CAI opposes SB 2404.

Proxies are a mechanism by which owners designate someone to vote for them at a meeting they cannot attend. Proxies have been a part of the Hawaii condominium statute for decades. Even before they were part of the Hawaii statute in the late 1970s, proxies have been in every condominium documents for the simple reason that they are a democratic process allowing owners the opportunity to vote or designate someone they trust to vote for them at association meetings. Every condominium project in the State of Hawaii allows owners to submit a proxy for association meeting. SB 2404 would disenfranchise thousands of owners in the state for no good reason.

Not only would eliminating proxies be anti-democratic and bad policy, it would also be unconstitutional. Courts have recognized that proxies are a substantive right in governing documents of associations and corporations. Depriving owners of their substantive right to vote or designate someone they trust to vote for them would violate the U.S. Constitution's contracts clause.

The Honorable Senator Jarrett Keohokalole, Chair  
RE: SB 2404 - Relating to Condominiums  
February 4, 2024  
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For these reasons CAI opposes SB 2404. If you have any questions,  
I will be available to answer them.

Very truly yours,



Richard S. Ekimoto

for

The Hawaii Legislative  
Action Committee of the  
Community Associations  
Institute



## DISTRICT 25 COUNCIL

Ala Moana  
Kakaako  
Downtown

District  
Council  
Officers

Kim Coco Iwamoto  
Chair

Osa Tui, Jr.  
Vice Chair

John Buckstead  
Secretary

Tyler Dos Santos-Tam  
Treasurer

At-Large Directors  
Marilyn Khan  
Dyson Chee  
Miriam Elliot  
Nicole Woo  
Francis Choe  
Thomas Brandt  
Harris Nakamoto  
Catherine Lau  
Stephan Bracha  
Patricia Stolfa  
Mark Forman

Sen. Jarrett Keohokalole, Chair  
Sen. Carol Fukunaga, Vice-Chair  
Comm. on Commerce & Consumer Protection

Tuesday, February 6, 2024

9:30 AM

Via Videoconference

RE: **SB2404** Prohibit Use of Proxy Votes - **Support**

Dear Chair Keohokalole, Vice Chair Fukunaga & Committee Members,

On November 21, 2023, District 25 Council of the Democratic Party of Hawaii, held an open meeting via zoom that was publicized to all registered democrats residing in District 25. Upon unanimous vote of all those in attendance, we determined that Consumer Protections for Condo Owners would be one of our district council's Top 5 Legislative Priorities for the 2024 Legislative Session.

We specifically determined to support those measures included in the Ala Moana - Kakaako Neighborhood Board Resolution Supporting Consumer Protection Bills for Condo Owners. (Please see attached copy below; note that it was adopted unanimously.) The resolutions specifically asks the legislature to pass bills that will "Eliminate voting by proxy and allow only in-person or mail-in ballot voting."

Almost half of all registered voters in District 25 are condo owners and they are paying very close attention to bills that may affect, what may be, their most valuable asset. Residents in our district received campaign mailers that educated them about the legislative process; so they know that legislative leaders can publicly support a bill, and simultaneously use their power to kill that same bill behind the scenes. So condo owners in District 25 are looking to see if their elected officials are sincere in using their influence as legislative leaders to enact laws that protect condo owners.



## ALA MOANA-KAKA'AKO NEIGHBORHOOD BOARD NO. 11

c/o NEIGHBORHOOD COMMISSION 925 DILLINGHAM BOULEVARD, SUITE 160 - HONOLULU, HAWAII,  
96817 PHONE (808) 768-3710 FAX (808) 768-3711 INTERNET <http://www.honolulu.gov/nco>

### **RESOLUTION SUPPORTING CONSUMER PROTECTION BILLS FOR CONDO OWNERS**

WHEREAS, the establishment of a condominium ombudsman has been proposed to aid in the resolution of condominium related disputes; and

WHEREAS, the Real Estate Branch of the Department of Commerce and Consumer Affairs (DCCA) is not providing the necessary assistance to help resolve disputes and concerns regarding violations of Hawaii Revised Statutes 514B, and the Regulated Industries Complaints Office (RICO) has very limited jurisdiction to assist and often closes cases with no findings, even with evidence of violations presented; and

WHEREAS, the Real Estate Branch of the DCCA has been required since 2013 to use the condominium education trust fund (CETF) to support mediation of condominium related disputes pursuant to Hawaii Revised Statute 514B-71, section (a)(4); and

WHEREAS, in 2018, the Real Estate Commission expanded the use of the condominium education trust fund to support voluntary binding arbitration; and

WHEREAS, mediation and arbitration has proven to be costly to homeowners and associations, but profitable for the attorneys and association management companies hired by the associations; and

WHEREAS, to eliminate the shortcomings and increase the effectiveness and accessibility of alternative dispute resolution at little to no additional cost to condominium owners and associations; and

WHEREAS, proxy voting unfairly benefits the incumbent association directors and managers who maintain restricted access to phone numbers and email addresses for each homeowner; and

WHEREAS, proxy voting has been confusing and ambiguous to owners who prefer to vote on their own, but are unable to attend their association elections; and

WHEREAS, each property management company is required to have one licensed real estate broker on staff, yet there is no licensure requirement for association community managers who are responsible for billions of dollars of real estate, and compliance with laws, rules, and professional standards; and

WHEREAS, the 2021 collapse of the Florida condominium, Champlain Towers South, exemplified the significant need for community association managers and board directors to know and fulfill their fiduciary duties to condo owners through the understanding of HRS 514B and their associations' governing documents; and

WHEREAS, documents reporting investigation and consultation studies of an association's buildings and infrastructure should be availed to all owners for their health and safety; and

WHEREAS, other association documents pertinent to and necessary for good governance should be availed to all owners in keeping with the theory that associations should be self-governed and self-regulated as intended by HRS 514B; so

NOW THEREFORE BE IT RESOLVED, that the Ala Moana-Kaka'ako Neighborhood Board No. 11 supports the passage of legislative bills that include the following solutions:

- Create a State Ombudsman Office to efficiently resolve complaints from homeowners and associations when laws and rules are not followed;
- Eliminate voting by proxy and allow only in-person or mail-in ballot voting;
- Increase transparency and homeowner access to association documents by increasing frequency of filing, quickening wait time, and broadening which documents are to be filed automatically, and by reducing the burdensome cost of electronic documents and extending owners free access to their association documents;

- Mandate licensure of association community managers to verify competency and ensure accountability and compliance with rules, laws, and professional standards; and
- Mandate educational requirements for association directors and community managers, to ensure they are prepared to properly fulfill their fiduciary, managerial, financial, and legal responsibilities to the association and the homeowners they serve.

BE IT FURTHER RESOLVED, that copies of this signed resolution be sent to all Hawaii Legislators.

*This Resolution was adopted by the Ala Moana/Kaka'ako Neighborhood Board No. 11 by Unanimous Consent on Tuesday, February 28, 2023. (9-0-0) (AYE: Chee, Farinas, Lee, Zehner, Rice, Mariano, Chung, Nam, Faringer. NAY: None. ABSTAIN: None.)*

**Signed by Kathleen Lee, NB11 Chair**

Date: 2/28/23

X  \_\_\_\_\_

**Hawaii  
Legislative  
Council  
Members**

Joell Edwards  
Wainiha Country  
Market  
Hanalei

Russell Ruderman  
Island Naturals  
Hilo/Kona

Dr. Andrew Johnson  
Niko Niko Family  
Dentistry  
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Robert H. Pahia  
Hawaii Taro Farm  
Wailuku

Maile Meyer  
Na Mea Hawaii  
Honolulu

Tina Wildberger  
Kihei Ice  
Kihei

L. Malu Shizue Miki  
Abundant Life  
Natural Foods  
Hilo

Kim Coco Iwamoto  
Enlightened Energy  
Honolulu

Chamber of  
Sustainable  
Commerce  
P.O. Box 22394  
Honolulu, HI  
96823



Sen. Jarrett Keohokalole, Chair  
Sen. Carol Fukunaga, Vice-Chair  
Comm. on Commerce & Consumer Protection

Tuesday, February 6, 2024  
9:30 AM  
Via Videoconference

RE: **SB2404** Prohibits Use of Proxy Votes - **Support**

Dear Chair Keohokalole, Vice Chair Fukunaga & Committee Members,

The Chamber of Sustainable Commerce represents over 100 small businesses across the State of Hawaii that strive for a triple bottom line: people, planet and prosperity; we know Hawaii can strengthen its economy without hurting workers, consumers, communities or the environment. This is why we support SB2404, which prohibits the use of proxies in condominium association voting, requires associations to allow members to vote by mail and attend and cast votes in association meetings through internet, teleconference, or other electronic transmission technology and requires associations to mail out paper ballots before any annual or other periodic election of board members.

Proxy voting unfairly benefits the incumbent directors seeking reelection to the association board and the contracted community management company. Management companies have the personal phone numbers, email addresses, and mailing addresses for every condo owner; they are in a position to use their unique access to each condo owner to collect proxy votes to support a particular board member – perhaps a member who has committed to renew their management contract or overlook lapses in the quality of service provided by the management company. By contrast, a candidate trying to challenge the incumbent board member, favored by the management company, would be denied access to the contact information of each condo owner because of privacy concerns.

In order to reduce conflicts of interests, abuses of power, and distortions of democracy, we urge this committee to pass SB2404, prohibit the use of proxy voting and secure other methods of direct voting amongst condo owners and their association boards.





**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 4, 2024

Honorable Sen. Jarrett Keohokalole, Chair  
Honorable Sen. Carol Fukunaga, Vice Chair  
Senate Committee on Commerce and Consumer Protection (CPN)  
Hawaii State Capitol, Room 229  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Testimony in OPPOSITION to SB2404; Hearing Date: February 6, 2024 at 9:30 a.m. in Senate Comm. conference room 229/videoconference; sent via Internet**

Dear Sen. Keohokalole, Chair, Sen. Fukunaga, Vice Chair, and Committee Members:

Thank you for the opportunity to provide testimony on this bill.

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, including over 100 last year). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2004.

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

This testimony is presented in OPPOSITION to SB2404.

**Summary of Bill:**

The Bill proposes major changes to the state law for condominium association meetings:

- A. It proposes to completely remove the use of proxies in condominium meetings, notwithstanding their use in Hawaii for at least 40 years.
- B. It proposes mandatory mail voting and electronic meetings with specific requirements.

## A. PROXIES

### **Current Status:**

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

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

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

**If association funds are to be used, there is a mandatory posting on the property and equal opportunity for owner solicitation of proxies.** Owners have 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 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. Additionally, the current statute provides that the Owner can limit the proxy holder as the Owner desires.

**This balanced approach to proxies has operated successfully for a large majority of condominium and community association owners.**

A brief description of the history of the introduction of bills relating to proxies is provided.

**History:** The proposal to limit or eliminate proxies has had a long history being presented in the House and subsequently deferred in the House or the Senate. In this case, it is presented initially to the Senate.

### **2023 Rejection**

HB377 contained wording to eliminate an owner's right to select a majority of directors present to vote on the owner's behalf. It was deferred by the House CPC on February 2, 2023.

### **2022 Rejection**

HB1651 contained wording to eliminate an owner's right to select a majority of directors present to vote on the owner's behalf. It was deferred by the House CPC on February 3, 2022. The companion bill SB2815 was not heard.

### **2021 Rejection**

HB221 proposed to reduce the rights to solicit proxies, even those for quorum purposes only.

The CPC issued a report that stated in part:

**“Your Committee finds that proxies are an important part of the governance of a condominium association, including ensuring quorum for purposes of annual meetings. Proxies allow unit owners to participate in association matters in the event they are unable to be physically present at an association meeting.”**

Your Committee further finds, however, that some condominium owners have raised concerns that proxies may be used by board members in an unscrupulous manner. This measure is intended to help address these concerns.

Your Committee has amended this measure by:

- (1) Retaining statutory language that provides the option on a standard proxy form to submit a proxy to the condominium board as a whole;
- (2) Changing the effective date to January 1, 2050, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.”

*[Emphasis added.]*

The Committee once again chose NOT to amend the existing wording in the state law. The remaining part of the bill went to the Senate and it was deferred on March 18, 2021.

On February 3, 2021, the Senate Committee on Commerce and Consumer Protection deferred a similar bill (SB688). The same committee did not hold a hearing on the companion bill, SB61.

On February 10, 2021, the CPC deferred a bill with similar wording (HB495).

### **Previous Rejections**

There have been similar proxy bills presented and never adopted in 2009 (HB2042 and SB499; HB2042 was not heard and SB499 was deferred February 24, 2009 by the Senate Committee on Commerce and Consumer Protection).

**Robert's Rules of Order Newly Revised (12<sup>th</sup> ed.) ("Robert's Rules"):**

Robert's Rules is a required parliamentary for the conduct of condominium and board meetings when the law and governing documents are silent. Robert's Rules 45:70 discourages the use of proxies in organizations where membership is "individual, in person, and nontransferable."

45:70 states in part:

Ordinarily [it] [proxies] should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable. **In a stock corporation, on the other hand, where the ownership is transferable, the voice and vote of the member also is transferable, by use of a proxy.** But in a nonstock corporation, where membership is usually on the same basis as in an unincorporated, voluntary association, voting by proxy should not be permitted unless the state's corporation law—as applying to nonstock corporations—absolutely requires it."

Condominium ownership is transferable, there may be a significant financial interest in the property, and the owner should have the right of representation.

**B. MAIL BALLOT; SPECIFIC REQUIREMENTS**

The use of electronic voting is in its infancy in Hawaii. Several associations are responding to recent changes permitting owners to conduct meetings online or have electronic voting outside of a meeting.

It's patently obvious that the bill's lay supporters don't realize the unintended consequences of this bill.

If it becomes law, the bill will have the opposite effect for many associations. It would remove owners' choice for in-person meetings, make it almost impossible to remove a recalcitrant board of directors, and reduce the chances of obtaining a quorum. **We purposely will not provide a roadmap in this testimony for boards to completely defeat or frustrate owners' wishes should this bill become law.**

We recognize that HRS §514B-121 needs some clarification in the intermediate term. Several stakeholders are working on wording that will promote condominium participation and involved ownership through electronic meetings.

We ask the legislature to avoid this type of knee-jerk reaction.

**Our position:**

The use of proxies has proved to be an important part of the association quorum and meeting process. An owner has equal rights to designate a board of directors in multiple ways or any other individual to represent the owner's interest. An owner may limit the proxy as the owner desires, pursuant to HRS §514B-123. An owner cannot be forced to turn in a proxy.

There is no valid reason presented for destroying this ownership right or micro-managing ownership meetings. All condominium associations in our experience provide for proxies in their governing documents. This bill, if it becomes law, would invalidate the proxy sections of almost 2,000 condominium associations in Hawaii.

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

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

Sincerely,

*Steve Glanstein*

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

**SB-2404**

Submitted on: 2/3/2024 9:00:55 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

At this time our association needs to oppose SB2404. Although the intent is to allow greater participation of owners, there are still security concerns, technology constraints, and costs to the association for this proposal. Please defer at this time.

Mike Golojuch, Sr., President

**SB-2404**

Submitted on: 2/3/2024 12:17:16 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Honolulu Tower is a 396 unit condominium built in 1982. Our residents span all ages, from infants to centenarians. Among our owners are many who do not possess smart phones, computers, electronic devices nor do they know how to use such technology. Some rarely leave their apartment. To reach them with important information we do it the old fashioned way: paper delivered to the units.

At its meeting on February 7, 2022, the Association of Apartment Owners of Honolulu Tower Board of Directors voted to oppose SB2852, the precursor to 2024's SB2404. Among objections there was concern that paper ballots would not be allowed, there was concern that candidates could not be nominated from the floor, there was concern that these provisions would be rammed down our throats without prior approval of at least 67% of the owners. These provisions were needed during lock down, during pandemic rules, etc. so associations could hold meetings, but their implementation since then should be by owner consent, not that of elected officials.

At its February 6, 2023 meeting the Board again reiterated its opposition to the prohibition of proxy voting, requiring voting by mail, attending and casting votes via internet or other electronic transmission technology, and paper ballots to be mailed out before any annual or periodic election of board members.

It is estimated that 45% of our owners are absentee owners. They do not live on site. Some live elsewhere in the state, others on the mainland or in international locations. Many of the absentee owners do not participate in the annual meetings. Quorum is obtained from those who live on site. Many feel comfortable giving a proxy for quorum only. That often deprives us from having quorum to vote on other items that arise at the annual meeting. Last year we had 44%.

The Board urges you to defer this bill.

Idor Harris

Resident Manager



Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE S.B. 2404** for the reasons set forth below.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai`i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

S.B. 2404 essentially takes a sledgehammer and arbitrarily and capriciously destroys the statutory scheme without good cause. In doing so, S.B. 2404 deprives unit owners of rights they have had for more than forty years. The proposed changes will very likely result in unanticipated outcomes, challenged elections, continued meetings without a quorum, and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer S.B. 2404 and appoint an advisory group of experts to study the proposed changes and conduct fact finding to ensure that the amendments are necessary to address existing problems, that the amendments will not deprive associations and unit owners of their existing rights, that the replacement text will achieve desired results, and that the text is clear and unambiguous.

**A. Sections 1 and 2 – Proxies are rendered illegal**

S.B. 2404 will radically change the manner in which condominium associations conduct their meetings as it declares proxies illegal. The proxy provisions benefit associations, in part, 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' schedules do not permit them to attend association meetings, or owners simply choose not to attend perhaps because they feel satisfied with the way their associations are being operated and do not feel it is necessary to attend 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 may 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 goodwill 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.

## **B. Section 3 – Mandatory Mail Voting and Electronic Meetings.**

Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings.

Section 3 requires all associations to (1) conduct voting by mail, (2) conduct meetings electronically so that unit owners can attend by “means of internet, teleconference, or other electronic transmission technology,” and (3) vote on matters electronically (except that elections must be conducted by mail).

In addition to making conventional meetings illegal, 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 is silent on the procedure for nominations to the board, whether nominees may submit statements supporting their candidacies, and deadlines and procedures for the various communications. These are critical omissions that will lead to disagreements.

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, and the approval of borrowing. By eliminating voting by proxy, and by mandating that unit owners have the opportunity to attend meetings and vote by internet, teleconference or other electronic transmission technology, voting procedures for all associations will be significantly more complicated and expensive. The Legislature should keep in mind that electronic meetings are relatively new to Hawaii condominiums and require a certain level of technological savvy. For many associations, S.B. 2404 will make holding annual meetings radically more difficult and complex.

Finally, the abolition of proxies will disenfranchise unit owners. Unit owners may not be in a location with internet access at the time of the meeting. Unit owners may have trouble attending meetings because of technological glitches or power outages. Unit owners may not have the computer skills to log onto meetings electronically or they may not own computers. Unit owners may be traveling or otherwise indisposed at the time of a meeting. Finally, many unit owners give their board their proxy because they are pleased with the manner in which their association is run or they may trust their board to cast their votes. If S.B. 2404 is adopted, all of these unit owners will no longer have the right to give their votes to a proxyholder.

### **C. Section 4 – Complications With Mail Voting**

The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as

Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

Most association bylaws provide for the election of directors by a majority vote at a meeting at which there is a quorum, as opposed to a specific percentage of owners. This measure fails to indicate how associations are to achieve a majority vote when there is no "quorum" because there is no in-person meeting. This short-sightedness will undoubtedly lead to numerous disputes and challenges of elections.

S.B. 2404 is very likely being advanced by a small, vocal minority of owners who are attempting to change the outcome of elections to address real or perceived problems that they have experienced with their associations. If this measure is adopted, thousands of condominium unit owners will be shocked by the drastic changes in the law, the heavy-handed abolition of proxies and the compulsory mail voting and electronic meetings.

For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Respectfully submitted,

Reyna C. Murakami

AOUO President of Mariner's Village 1

AOUO President of Waialae Place

AOUO Vice President of The Continental Apartments

**SB-2404**

Submitted on: 2/5/2024 9:01:40 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Mark McKellar	Testifying for Law Offices of Mark K. McKellar, LLC	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE S.B. 2404** for the reasons set forth below.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai`i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

S.B. 2404 essentially takes a sledgehammer and arbitrarily and capriciously destroys the statutory scheme without good cause. In doing so, S.B. 2404 deprives unit owners of rights they have had for more than forty years. The proposed changes will very likely result in unanticipated outcomes, challenged elections, continued meetings without a quorum, and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer S.B. 2404 and appoint an advisory group of experts to study the proposed changes and conduct fact finding to ensure that the amendments are necessary to address existing problems, that the amendments will not deprive associations and unit owners of their existing rights, that the replacement text will achieve desired results, and that the text is clear and unambiguous.

**A. Sections 1 and 2 – Proxies are rendered illegal**

S.B. 2404 will radically change the manner in which condominium associations conduct their meetings as it declares proxies illegal. The proxy provisions benefit associations, in part, 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' schedules do not permit them to attend association meetings, or owners simply choose not to attend perhaps because they feel satisfied with the way their associations are being operated and do not feel it is necessary to attend 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 may 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 goodwill 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.

### **B. Section 3 – Mandatory Mail Voting and Electronic Meetings.**

Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings.

Section 3 requires all associations to (1) conduct voting by mail, (2) conduct meetings electronically so that unit owners can attend by “means of internet, teleconference, or other electronic transmission technology,” and (3) vote on matters electronically (except that elections must be conducted by mail).

In addition to making conventional meetings illegal, 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 is silent on the procedure for nominations to the board, whether nominees may submit statements supporting their candidacies, and deadlines and procedures for the various communications. These are critical omissions that will lead to disagreements.

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, and the approval of borrowing. By eliminating voting by proxy, and by mandating that unit owners have the opportunity to attend meetings and vote by internet, teleconference or other electronic transmission technology, voting procedures for all associations will be significantly more complicated and expensive. The Legislature should keep in mind that electronic meetings are relatively new to Hawaii condominiums and require a certain level of technological savvy. For many associations, S.B. 2404 will make holding annual meetings radically more difficult and complex.

Finally, the abolition of proxies will disenfranchise unit owners. Unit owners may not be in a location with internet access at the time of the meeting. Unit owners may have trouble attending meetings because of technological glitches or power outages. Unit owners may not have the computer skills to log onto meetings electronically or they may not own computers. Unit owners may be traveling or otherwise indisposed at the time of a meeting. Finally, many unit owners give their board their proxy because they are pleased with the manner in which their association is run or they may trust their board to cast their votes. If S.B. 2404 is adopted, all of these unit owners will no longer have the right to give their votes to a proxyholder.

#### **C. Section 4 – Complications With Mail Voting**

The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

Most association bylaws provide for the election of directors by a majority vote at a meeting at which there is a quorum, as opposed to a specific percentage of owners. This measure fails to indicate how associations are to achieve a majority vote when there is no "quorum" because there is no in-person meeting. This short-sightedness will undoubtedly lead to numerous disputes and challenges of elections.

S.B. 2404 is very likely being advanced by a small, vocal minority of owners who are attempting to change the outcome of elections to address real or perceived problems that they have experienced with their associations. If this measure is adopted, thousands of condominium unit owners will be shocked by the drastic changes in the law, the heavy-handed abolition of proxies and the compulsory mail voting and electronic meetings.

For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Respectfully submitted,

Mark McKellar





**SB-2404**

Submitted on: 2/5/2024 9:13:54 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Rachel Glanstein	Testifying for AOA Lakeview Sands	Oppose	Written Testimony Only

Comments:

Aloha,

I STRONGLY OPPOSE S.B. 2404 and urge you to defer this bill.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai`i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

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them to attend association meetings, or owners simply choose not to attend perhaps because they feel satisfied with the way their associations are being operated and do not feel it is necessary to attend 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 (including mine) will find it impossible to obtain a quorum for association meetings. Associations may 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 goodwill 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.

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Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings.

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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, and the approval of borrowing. By eliminating voting by proxy, and by mandating that unit owners have the opportunity to attend meetings and vote by internet, teleconference or other electronic transmission technology, voting procedures for all associations will be significantly more complicated and expensive. The Legislature should keep in mind that electronic meetings are relatively new to Hawaii condominiums and require a certain level of technological savvy. For many associations, S.B. 2404 will make holding annual meetings radically more difficult and complex.

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#### C. Section 4 – Complications With Mail Voting

The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

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S.B. 2404 is very likely being advanced by a small, vocal minority of owners who are attempting to change the outcome of elections to address real or perceived problems that they have experienced with their associations. If this measure is adopted, thousands of condominium unit owners will be shocked by the drastic changes in the law, the heavy-handed abolition of proxies and the compulsory mail voting and electronic meetings.

For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Mahalo for your time,

Rachel Glanstein

**LAW OFFICES OF PHILIP S. NERNEY, LLLC**

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

February 3, 2024

Honorable Jarrett Keohokalole  
Honorable Carol Fukunaga  
Committee on Commerce and Consumer Protection  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **SB 2404 OPPOSE**

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

SB 2404 should be deferred.

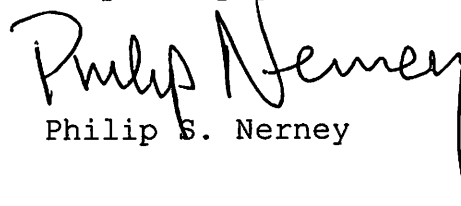
Advocates of minority rule always attack proxies. The only reason to seek to deprive owners of the opportunity to assign a proxy to is enshrine minority rule by activists.

Owners have options now. Why deprive owners of options?

Also, associations should be allowed, *but not mandated*, to have mail voting and electronic meetings. One hazard of mail voting, of course, is that it eliminates the possibility of nomination from the floor of the meeting.

Care should be taken with respect to altering established forms of governance. SB 2404 proposes a fundamental alteration of established practice without strong reason.

Very truly yours,

  
Philip S. Nerney

**Dale Arthur Head**

1637 Ala Mahina Place Honolulu, HI 96819

Saturday 3 February 2024

[sunnymakaha@yahoo.com](mailto:sunnymakaha@yahoo.com)

To: **CPN Committee Chair Jarrett Keohokalole  
and Vice Chair Carol Fukunaga**

**Subject: SB2404 Prohibits the use of proxies in condominium association voting. Requires associations to allow members to vote by mail and attend and cast votes in association meetings through internet, teleconference, or other electronic transmission technology. Requires associations to mail out paper ballots before any annual or other periodic election of board members.**

**Aloha: 1.** I strongly SUPPORT passage of this worthy Bill as it would confer normal voting rights upon Home Owners Association (HOA) members which for decades now have been made 'conditional', that is, in order to cast ones' own vote in an election or other matter they must be physically present at a meeting. This is an anti-democratic ruse cooked up by Developers who form Associations. This screens out HOA members who, for whatever reason, cannot be there, which includes mobility challenged, sick people, and many investors who do not reside at the property. This is a Bill I have sought now for several years after determining how certain Managing Agents' employees hijack elections through proxy manipulation which is both unethical and dishonest, but, not prohibited by HRS514b.

**2.** When I took the time to do post-election audits of proxies, only then were my suspicions confirmed of skullduggery. And, in comparing my experiences to those of other HOA rights advocates at our Capitol, we found the same intrigues also perpetrated by other companies, which makes it a '**business model**'. While the state issues these companies business licenses, it refuses to investigate them or take action on information of dishonesty. Instead of consumer protection, we are subjected to consumer exploitation. That is not just my opinion, but is FACT!!! In truth, it fits the federal definition of '**racketeering**'. When they knowingly pull this stunt, it is a form of theft of services as they are being paid for their time.

**3.** Here is some good 'word-smithing', from a poem by **Sir Walter Scott written in 1808**. The full phrase is "**Oh, what a tangled web we weave when first we practice to deceive**". It means that when you act dishonestly you are initiating problems, and a domino structure of complications, which will eventually run out of control.

**4.** Neither the original US or Hawaii Constitution specified voting rights, which is why we have, nationwide, voter suppression and other related problems. Passing this Bill into law will make some corporate donors very very unhappy, so, try protecting the Public Good on this one and pass it. I have to wonder why there is not yet a House version. Hm.....

**Respectfully, Dale Arthur Head**

**SB-2404**

Submitted on: 2/3/2024 1:12:26 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sandie Wong	Individual	Oppose	In Person

Comments:

As a condo owner and resident, I oppose this bill because I don't see what it will accomplish. All owners can participate in condo association voting via the current system with proxies.

Lourdes Scheibert  
920 Ward Ave  
Honolulu, Hawaii. 96814

To: CPN Committee Chair Jarrett Keohokalole, Vice Chair Carol Fukunaga  
and members of the committee

I am Lourdes Scheibert and I support, SB2404

Prohibits the use of proxies in condominium association voting. Requires associations to allow members to vote by mail and attend and cast votes in association meetings through internet, teleconference, or other electronic transmission technology. Requires association to mail out paper ballots before any annual or other periodic election of board members

Civil Beat has recently released several articles that shed light on internal conflicts within condominium-associations, involving association management, the board, and owners. One of their latest articles, "It Started With A Messy Front Porch. Now This Elderly Women's Condo Association May Take Her Home Away" has garnered a total of 139 comments. Those comments reveal that the state of Condominium Corporate Self-Governance is far from ideal. The power dynamics heavily favor the director, who possess unrestricted authority to impose fines, place liens, and even hire an attorney to initiate non-judicial foreclosures.

Despite the board's full authority serving as all three branches of government, it is not mandatory for directors to undergo education programs that have been endorsed by the Real Estate Commission. These programs are funded by the owners' mandatory contributions to the Condominium Education Trust Fund, and these programs provide directors with the option to participate if they so desire.

Owners who have been burdened with millions of dollars in assessments for building repairs due to deferred maintenance caused by historically low maintenance fees can directly attribute these issues to inadequate management and an untrained board of directors. In situations where a trained but minority director attempts to engage in a debate with

a director who has not familiarized himself with the association's project documents or HRS514B-Condominium Law, it becomes challenging to have a productive discussion.

During my investigation into the origins of proxy assignments to the board, I stumbled upon a testimony given to the Senate in 1984. This testimony (attached) was delivered by Richard Port, the former Chairman of the Hawaii Democratic Party, and it strongly aligns with my belief that it is necessary to advocate for the removal of proxies to the board.

Mr. Port wrote:

*With regard to the current abuse, in which some boards use association funds to solicit proxies under the guise of obtaining a quorum and then using the proxies to reelect themselves or in other ways to maintain control over association funds which sometimes exceed .... a year, this abuse needs to be controlled.*

This was a problem prior to 1984 and the same problems exist today.

Thank-you,  
Lourdes Scheibert  
Condominium Owner



1600 Ala Moana Blvd. #3100  
Honolulu, Hawaii 96815  
March 1, 1984

The Honorable Steve Cobb  
State Senate, Room 202  
State Capitol  
Honolulu, Hawaii 96813

Dear Senator Cobb:

My name is Richard Port. I am testifying in support of S.B.No. 1816.

The practice of having resident managers and managing agents soliciting and casting votes for the election of association board members, places these individuals in an obvious conflict of interest situation, and this practice needs to be eliminated immediately.

With regard to the current abuse in which some boards use association funds to solicit proxies under the guise of obtaining a quorum and then using the proxies to reelect themselves or in other ways to maintain control over association funds, which sometimes exceed \$2,000,000 a year, this abuse needs to be controlled.

With this in mind, I suggest the following revised language for S.B. 1816-84:

No resident manager or managing agent shall solicit or accept any proxies from any apartment owner of the association of owners which employs him or her, nor shall he cast any proxy vote for an apartment owner of that association at any association meeting.

No member of a board of directors who uses association funds to solicit proxies, shall cast any proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors.

I hope the above will be perceived as a friendly amendment to S.B. 1816-84.

Thank you for allowing me to testify on this bill, and thank you for the excellent work this committee is doing to improve condominium law.

Sincerely,

*Richard J. Port*

Richard J. Port

SB 1816  
Aug. 3/2/84  
3:00 p.m.

**SB-2404**

Submitted on: 2/4/2024 2:27:10 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Greg Misakian	Individual	Support	Remotely Via Zoom

Comments:

I Support SB2404.

I currently serve as a Director on my condominium associations Board. The current Board President and other Board members have abused the use of proxies for years, enabling them to remain in power.

Owners are not even made aware how many open Board seats there are for our annual meeting, or encouraged to run for a seat on the Board.

Please pass this extremely important bill, and give owners the right to vote the way we do in America (one person, one vote).

Gregory Misakian

Kokua Council, 2nd Vice President

Waikiki Neighborhood Board, Sub-District 2 Vice Chair

**SB-2404**

Submitted on: 2/3/2024 10:20:27 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Terry Welch	Individual	Support	Written Testimony Only

Comments:

**I support SB2404 that would prohibit the use of proxies in condominium association voting.** There is a rampant history of boards using proxies (obtained under the guise of "meeting a quorum" "to avoid rescheduling the meeting" "to avoid additional expense") in order for members of the board to repeatedly re-elect themselves". **I support the provisions of SB2404 that would require associations to allow members to vote by mail and attend and cast votes in association meetings through internet, teleconference, or other electronic transmission technology.** I support the provisions of SB2404 that would require associations to mail out paper ballots before any annual or other periodic election of board members.

**This reform is also needed for PLANNED COMMUNITY ASSOCIATIONS (HRS 421J) for the same reason.**

**SB-2404**

Submitted on: 2/3/2024 12:03:04 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Ben Robinson	Individual	Support	Written Testimony Only

Comments:

Aloha!

I am writing in to strongly SUPPORT this measure. Greater flexibiity in secure voting is needed for an increasingly mobile environment.

Mahalo!

**SB-2404**

Submitted on: 2/3/2024 1:54:26 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Rick Tabor	Individual	Support	Written Testimony Only

Comments:

Considering the level of dishonesty, lack of integrity and condo association distrust, I STRONGLY SUPPORT ProhibitING the use of proxies in condominium association voting. To improve the current reported history of costly unethical proxy voting practices, reuiring associations to allow members to vote by mail and attend and cast votes in association meetings through internet, teleconference, or other electronic transmission technology makes sense. Requiring associations to mail out paper ballots within a reasonanle time frame, before any annual or other periodic election of board members, with amole time to return a vote. Now that should probably been in practice long before this came to a bill. It's just plain common sense, for any living situation. After all, healthy communities are all about supporting each other. Thank you for your time and consideration on this very important matter. Take care.

**SB-2404**

Submitted on: 2/3/2024 3:37:48 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Marcia Kimura	Individual	Support	Written Testimony Only

Comments:

CPN Committee Members:

I support this wonderfully simple, yet powerful measure that would stop the unethical manipulation and machinations in condo.elections that have plagued owners probably since the first association meetings were held.

It just makes perfect sense that the process should follow the way political elections are conducted by mail-in ballots, or electronic technology.

This would also rectify the repeated re-election of undesirable board members, and make it possible for election of new directors with fresh insights on association governance.

Please do everything possible to promote the passage of this measure.

Thank you for your continued efforts towards fair and democratic processes in condominiums.

Tuesday, February 6, 2024 @ 9:30 AM

**SB 2404: Elections & Proxies**

My name is Jeff Sadino, I am a condo owner in Makiki, and I am providing **COMMENTS** this Bill.

I support the changes made on pages 6 – 7, lines 19 – 2, specifically that Owners can participate and vote in “association” meetings remotely. However, I would clarify that this applies to both “Association” meetings and “Board” meetings.

17        ~~(5) Whenever otherwise authorized in an association's~~  
18                ~~declaration or bylaws.]~~  
19        members of the association shall be allowed to participate in  
20        mail voting and participate in any association meeting by means

2024-0770 SB SMA.docx

6



1        of internet, teleconference, or other electronic transmission  
2        technology in a manner that allows members the opportunity to:  
3                (1) View and hear the proceedings substantially  
4                concurrently with the occurrence of the proceedings;  
5                (2) Vote on matters submitted to members of the  
6                association;  
7                (3) Pose questions; and  
8                (4) Make comments.

I also support changes to the election timelines. Currently, the first notification I get from Associa is a letter notifying me of an upcoming Association meeting and that in order to satisfy quorum, I need to return my proxy as soon as possible, otherwise the Association will incur additional financial expenses. Of course, most people return the proxy and give their voice and vote to the Board "As a Whole." This initial notification has never included, either from Hawaiiiana or Associa, any information about how many Board seats are up for election or which Owners are even running for election.

The obviously correct process should be this:

First, notify owners that there is an upcoming Association meeting. If any Owners are interested in running for election, they should notify the Property Manager.

Second, send out election ballots/proxies with information about how many Board seats are up for election and information about the candidates who are running.

The current system is detrimental to Owners who want to run for election. By the time they have distributed their qualifications to be a Board Member, a lot of Owners have probably already returned their proxy to the Board "As A Whole", just simply because they had no information that anybody even wanted to run in the first place.

1 ~~is void if it purports to be revocable without notice.]~~ The  
2 association shall mail out a paper ballot to each unit owner no  
3 later than days before the date of any meeting for the  
4 annual or other periodic election of board members.



I also support a “two-envelope” voting system. Currently, a “one-envelope” system is used. This means that the proxy/vote is returned to the Property Manager (i.e. incumbent Board Members) so that they can count the number of votes as they come in prior to the election. If the incumbent Board Members can see that their preferred candidate is behind in the votes, they can contact individual Owners, discreetly and off-the-books, to return their proxy with a vote going towards the Board’s preferred candidate.

With a two-envelope system, the Owner’s information would be contained in the outer envelope for quorum purposes. The Owner’s actual vote would remain sealed within the inner envelope and would not be opened until the actual Association meeting. This way, the incumbent Board Members would not be able to know the results of the election beforehand and adjust their campaigning as a result.

Thank you for the opportunity to testify,

Jeff Sadino

**SB-2404**

Submitted on: 2/4/2024 1:13:40 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jacob Wiencek	Individual	Oppose	Written Testimony Only

Comments:

Aloha Senators,

My name is Jacob Wiencek and I am a condo owner in Hawaii. I strongly oppose this bill which needlessly complicates association governments and is unnecessary government interference in association elections.

Proxy voting is a crucial option for out of state or otherwise unavailable residents to ensure their participation in association governance. While the recent pandemic showed the promise of electronic meeting options, those have drawbacks. It's challenging to ensure protections of the secret ballot online and any connection interruptions would throw an association meeting into doubt.

Let me be clear. I am in no way opposed to associations choosing to allow for electronic means of participation. But that decision should rest with the communities themselves and not be impacted by government mandates.

**The Senate  
The Thirty-Second Legislature  
Committee on Commerce and Consumer Protection  
Tuesday, February 6, 2024  
9:30 a.m.**

To: Senator Jarrett Keohokalole, Chair  
Re: SB 2404, Relating to Condominiums

Aloha Chair Jarrett Keohokalole, Vice-Chair Carol Fukunaga, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups with over 800 members and affiliates in Hawaii and I serve on the board of the Hawaii Alliance for Retired Americans, with a local membership of over 20,000 retirees.

I also serve as the leader of a coalition of hundreds of property owners, mostly seniors, who own and/or reside in associations throughout Hawaii and I have served as an officer on three condominium associations' boards.

Mahalo for the opportunity to testify in **support of SB 2404.**

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.<sup>1</sup>

Every year, homeowners' associations (HOAs), including condominiums, are required to hold their annual meetings and elections about which the Hawaii State Department of Commerce and Consumer Affairs (DCCA) wrote in its brochure, *Owners' Rights and Responsibilities*,<sup>2</sup>

"owners' most important role is electing directors."

While some owners attend their annual association meetings and vote in person, many use proxy forms that assign another to vote in their stead, creating the misleading impression that these owners' decisions are represented because the standard proxy forms provided by property management companies that facilitate most association elections pursuant to HRS514B-123 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.

Experience has shown that these proxies can be assigned even further, by the proxy holder to another designee, without the knowledge of the owner, creating an even greater distance between the owner of the vote and the one who casts that owner's vote.

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<sup>1</sup><https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical>

<sup>2</sup>Real Estate Commission, Department of Commerce and Consumer Affairs, *Condominium Property Regimes: Owner Rights and Responsibilities Based Upon the Hawaii Revised Statutes as of July 15, 2009*:

In general, the "self-governance principles" under which a condominium association operates requires board members and owners to understand that: (1) the owners' most important rule is electing directors...

Despite this knowledge, property management companies and association attorneys testify that the use of proxies offers owners “free choice,” revealing their preference for disengaged and absent owners as this detachment makes management and counsel’s relationships with directors less scrutable.

But states with larger numbers of homeowners’ associations, like Florida<sup>3</sup> and Illinois,<sup>4</sup> prohibit the use of proxy voting because of the potential for election fraud, and mandate ballot voting for the election of directors.

Indeed, owners’ scrutiny of our associations’ election records revealed “irregular” electoral processes that occurred primarily at the election facilitator’s level, usually the property management company as they oversee most association elections despite their pecuniary interest in the election results. Whether intentional, caused by human error, or due to sheer coincidence, nearly every “irregularity” in every step of the election process was revealed to favor re-electing incumbent directors.

Some of these observed “irregularities” were:

- (a) Voiding valid proxies and accepting invalid proxies as valid for use. Both actions may be discounted as human error but were noticeably tilted towards board incumbents.
- (b) Misplacing certain proxies and/or ballots which mishandling favored incumbents.
- (c) 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.

Additionally, although legally prohibited from soliciting proxies for their use as assignees but whose livelihood depends on election results, associations’ management was witnessed to sidestep the law by directing owners to select proxy options that were favorable to incumbents.

Some of these owners reported that they felt pressured to accede to these “recommendations” for fear of mistreatment or of losing services to which they are properly entitled.

The “board as whole” proxy option serves to confer greater voting power to the board’s majority, allowing them to repeatedly vote themselves into office while depriving and defeating candidates who may have garnered even more individual owners’ votes than these incumbent directors.

Once elected, directors have tremendous latitude and power to operate the business of the association, having the authority to enter into contracts, spend association funds, adopt and enforce rules, and discipline owners and residents. And decisions that are statutorily delegated for the association’s determination can be misappropriated using proxies that inflate the dominance of the board. The legal and financial implications of these elections have formidable consequences; thus, everything hinges on the integrity of the electoral process.

Proponents of the continued use of proxies insist that proxies are needed to offset the apathy of owners, but, year after year, the re-election of incumbent directors, regardless of sizeable dissent from owners, convince owners that these incumbents are entrenched and inexorable, which inevitably generates greater

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<sup>3</sup>[http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0700-0799/0723/Sections/0723.078.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0723/Sections/0723.078.html)

<sup>4</sup><https://www.chicagotribune.com/2011/03/14/associations-proxy-voting-system-violates-state-law/>

owner-apathy because their votes appear to have little consequence.

In 2020, Hawaii's Office of Elections reported that the mail-in ballot response was a record-breaking 95.11% of overall voter turnout.<sup>5</sup> In 2022, Hawaii's Office of Elections reported that the mail-in ballot turnout was a record-breaking 96.02% of overall voter turnout.<sup>6</sup>

A similar direct-voting-by-ballot method, in person or by mail (i.e., absentee ballot), 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 directly participate in their associations' meetings.

Further, the facilitation of association elections by biased parties with interest in the outcome should be discouraged, and replaced by the use of neutral professional third parties to oversee the electoral process to assure owners of the integrity of the election and that the results are honest.

For one-third of Hawaii's residents, their residential community associations are significant, so the truly representative character of these associations should be a principal policy goal of all legislators.

Legislators who encourage condominiums and HOA housing development to mitigate Hawaii's housing shortage and the high cost of housing should recognize that current association election laws nurture owner disenfranchisement and detachment and enable fraud.

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

"Elections play a vital role in a free and fair society and are a cornerstone of America democracy. We recognize the fundamental link between the trust in election infrastructure and the confidence the American public places in basic democratic function."<sup>7</sup>

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<sup>5</sup><https://files.hawaii.gov/elections/files/results/2020/general/histatewide.pdf>

<sup>6</sup><https://elections.hawaii.gov/wp-content/results/histatewide.pdf>

<sup>7</sup><https://www.dhs.gov/topics/election-security>

**SB-2404**

Submitted on: 2/4/2024 1:17:10 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

I am the owner occupant and board member of a high rise condominium in downtown Honolulu. I STRONGLY OPPOSE S.B. 2404 for the reasons set forth below.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai`i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

S.B. 2404 essentially takes a sledgehammer and arbitrarily and capriciously destroys the statutory scheme without good cause. In doing so, S.B. 2404 deprives unit owners of rights they have had for more than forty years. The proposed changes will very likely result in unanticipated outcomes, challenged elections, continued meetings without a quorum, and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer S.B. 2404 and appoint an advisory group of experts to study the proposed changes and conduct fact finding to ensure that the amendments are necessary to address existing problems, that the amendments will not deprive associations and unit owners of their existing rights, that the replacement text will achieve desired results, and that the text is clear and unambiguous.

A. Sections 1 and 2 – Proxies are rendered illegal

S.B. 2404 will radically change the manner in which condominium associations conduct their meetings as it declares proxies illegal. The proxy provisions benefit associations, in part, 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' schedules do not permit them to attend association meetings, or owners simply choose not to attend perhaps because they

feel satisfied with the way their associations are being operated and do not feel it is necessary to attend 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. Several years ago there was a long discussion with a consultant about the need to replace the windows. Based on that discussion, there was an amendment proposed to the governing documents which received the requisite 67% vote in seven and a half weeks. This would never have succeeded had there not been an in person meeting. Last year, for the first time we had directed proxies, whereby the proxy holder was instructed on who to vote for for board membership. It was the directed proxy votes that elevated the owner to board member. If you make any changes, you should provide for directed proxy votes for board membership, not eliminate proxies.

Without the proxy voting provisions in Section 514B-123(b), many associations will find it impossible to obtain a quorum for association meetings. Associations may not be able to have owners approve tax resolutions and vote on other matters that are taken up at association meetings, including the retention or replacement of the managing agent. The sense of community, trust and goodwill 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.

#### B. Section 3 – Mandatory Mail Voting and Electronic Meetings.

Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings. Often, in my condo, persons nominated from the floor have been elected to the board. Nominees are encouraged to make a shot speech prior to voting.

Section 3 requires all associations to (1) conduct voting by mail, (2) conduct meetings electronically so that unit owners can attend by “means of internet, teleconference, or other electronic transmission technology,” and (3) vote on matters electronically (except that elections must be conducted by mail).

In addition to making conventional meetings illegal, 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 is silent on the procedure for nominations to the board, whether nominees may submit statements supporting their candidacies, and deadlines and procedures for the various communications. These are critical omissions that will lead to disagreements.

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, and the approval of borrowing. By eliminating voting by proxy, and by mandating that unit owners have the opportunity to attend meetings and vote by internet, teleconference or other electronic transmission technology, voting procedures for all associations will be significantly more complicated and expensive. The Legislature should keep in mind that electronic meetings are relatively new to Hawaii condominiums and require a certain level of technological savvy. For many associations, S.B. 2404 will make holding annual meetings radically more difficult and complex.

Finally, the abolition of proxies will disenfranchise unit owners. Unit owners may not be in a location with internet access at the time of the meeting. Unit owners may have trouble attending meetings because of technological glitches or power outages. Unit owners may not have the computer skills to log onto meetings electronically or they may not own computers. One owner in my condo complained to Safeway because he was unable to get a discount because it was a digital coupon. He didn't know how to access it. This owner would be disenfranchised under this measure. Unit owners may be traveling or otherwise indisposed at the time of a meeting. Finally, many unit owners give their board their proxy because they are pleased with the manner in which their association is run or they may trust their board to cast their votes. If S.B. 2404 is adopted, all of these unit owners will no longer have the right to give their votes to a proxy holder.

#### C. Section 4 – Complications With Mail Voting

The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

Most association bylaws provide for the election of directors by a majority vote at a meeting at which there is a quorum, as opposed to a specific percentage of owners. This measure fails to indicate how associations are to achieve a majority vote when there is no "quorum" because there is no in-person meeting. This short-sightedness will undoubtedly lead to numerous disputes and challenges of elections.

S.B. 2404 is very likely being advanced by a small, vocal minority of owners who are attempting to change the outcome of elections to address real or perceived problems that they have experienced with their associations. I can name several. If this measure is adopted, thousands of



condominium unit owners will be shocked by the drastic changes in the law, the heavy-handed abolition of proxies and the compulsory mail voting and electronic meetings.

For the foregoing reasons, I urge the Committee to defer S.B. 2404.

**SB-2404**

Submitted on: 2/4/2024 1:56:00 PM

Testimony for CPN on 2/6/2024 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.

**SB-2404**

Submitted on: 2/4/2024 2:42:17 PM

Testimony for CPN on 2/6/2024 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 Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. 2404 for the reasons set forth below.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai`i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

S.B. 2404 essentially takes a sledgehammer and arbitrarily and capriciously destroys the statutory scheme without good cause. In doing so, S.B. 2404 deprives unit owners of rights they

have had for more than forty years. The proposed changes will very likely result in unanticipated outcomes, challenged elections, continued meetings without a quorum, and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer S.B. 2404 and appoint an advisory group of experts to study the proposed changes and conduct fact finding to ensure that the amendments are necessary to address existing problems, that the amendments will not deprive associations and unit owners of their existing rights, that the replacement text will achieve desired results, and that the text is clear and unambiguous.

#### A. Sections 1 and 2 – Proxies are rendered illegal

S.B. 2404 will radically change the manner in which condominium associations conduct their meetings as it declares proxies illegal. The proxy provisions benefit associations, in part, 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' schedules do not permit them to attend association meetings, or owners simply choose not to attend perhaps because they feel satisfied with the way their associations are being operated and do not feel it is necessary to attend 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 may 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 goodwill 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.

#### B. Section 3 – Mandatory Mail Voting and Electronic Meetings.

Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings.

Section 3 requires all associations to (1) conduct voting by mail, (2) conduct meetings electronically so that unit owners can attend by “means of internet, teleconference, or other

electronic transmission technology,” and (3) vote on matters electronically (except that elections must be conducted by mail).

In addition to making conventional meetings illegal, 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 is silent on the procedure for nominations to the board, whether nominees may submit statements supporting their candidacies, and deadlines and procedures for the various communications. These are critical omissions that will lead to disagreements.

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, and the approval of borrowing. By eliminating voting by proxy, and by mandating that unit owners have the opportunity to attend meetings and vote by internet, teleconference or other electronic transmission technology, voting procedures for all associations will be significantly more complicated and expensive. The Legislature should keep in mind that electronic meetings are relatively new to Hawaii condominiums and require a certain level of technological savvy. For many associations, S.B. 2404 will make holding annual meetings radically more difficult and complex.

Finally, the abolition of proxies will disenfranchise unit owners. Unit owners may not be in a location with internet access at the time of the meeting. Unit owners may have trouble attending meetings because of technological glitches or power outages. Unit owners may not have the computer skills to log onto meetings electronically or they may not own computers. Unit owners may be traveling or otherwise indisposed at the time of a meeting. Finally, many unit owners give their board their proxy because they are pleased with the manner in which their association is run or they may trust their board to cast their votes. If S.B. 2404 is adopted, all of these unit owners will no longer have the right to give their votes to a proxyholder.

#### C. Section 4 – Complications With Mail Voting

The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

Most association bylaws provide for the election of directors by a majority vote at a meeting at which there is a quorum, as opposed to a specific percentage of owners. This measure fails to indicate how associations are to achieve a majority vote when there is no "quorum" because there is no in-person meeting. This short-sightedness will undoubtedly lead to numerous disputes and challenges of elections.

S.B. 2404 is very likely being advanced by a small, vocal minority of owners who are attempting to change the outcome of elections to address real or perceived problems that they have experienced with their associations. If this measure is adopted, thousands of condominium unit owners will be shocked by the drastic changes in the law, the heavy-handed abolition of proxies and the compulsory mail voting and electronic meetings.

For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Respectfully submitted,

Julie Wassel



**SB-2404**

Submitted on: 2/4/2024 3:59:18 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
William Lazu	Individual	Support	Written Testimony Only

Comments:

I write in support of getting an Ombudsman to oversee condominiums.

There has much in the press how Hawaii is the most corrupt state in the union. I hope not.

People do what one inspects not necessarily what we expect.

Many Hawaii homeowners own condominiums. We need someone to advocate for us.

**SB-2404**

Submitted on: 2/4/2024 5:18:51 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Tamara Paltin	Individual	Support	Written Testimony Only

Comments:

I support SB2404 I believe that allowing virtual methods to participate and vote is needed.

Mahalo,

Tamara Paltin

**SB-2404**

Submitted on: 2/4/2024 6:21:11 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE S.B. 2404** for the reasons set forth below.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai`i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

S.B. 2404 essentially takes a sledgehammer and arbitrarily and capriciously destroys the statutory scheme without good cause. In doing so, S.B. 2404 deprives unit owners of rights they have had for more than forty years. The proposed changes will very likely result in unanticipated outcomes, challenged elections, continued meetings without a quorum, and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer S.B. 2404 and appoint an advisory group of experts to study the proposed changes and conduct fact finding to ensure that the amendments are necessary to address existing problems, that the amendments will not deprive associations and unit owners of their existing rights, that the replacement text will achieve desired results, and that the text is clear and unambiguous.

**A. Sections 1 and 2 – Proxies are rendered illegal**

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meetings because they may be traveling or residing elsewhere, owners' schedules do not permit them to attend association meetings, or owners simply choose not to attend perhaps because they feel satisfied with the way their associations are being operated and do not feel it is necessary to attend 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 may 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 goodwill 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

### **B. Section 3 – Mandatory Mail Voting and Electronic Meetings.**

Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings.

Section 3 requires all associations to (1) conduct voting by mail, (2) conduct meetings electronically so that unit owners can attend by “means of internet, teleconference, or other electronic transmission technology,” and (3) vote on matters electronically (except that elections must be conducted by mail).

In addition to making conventional meetings illegal, 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 is silent on the procedure for nominations to the board, whether nominees may submit statements supporting their candidacies, and deadlines and procedures for the various communications. These are critical omissions that will lead to disagreements.

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, and the approval of borrowing. By eliminating voting by proxy, and by mandating that unit owners have the opportunity to attend meetings and vote by internet, teleconference or other electronic transmission technology, voting procedures for all associations will be significantly more complicated and expensive. The Legislature should keep in mind that electronic meetings are relatively new to Hawaii condominiums and require a certain level of technological savvy. For many associations, S.B. 2404 will make holding annual meetings radically more difficult and complex.

Finally, the abolition of proxies will disenfranchise unit owners. Unit owners may not be in a location with internet access at the time of the meeting. Unit owners may have trouble attending meetings because of technological glitches or power outages. Unit owners may not have the computer skills to log onto meetings electronically or they may not own computers. Unit owners may be traveling or otherwise indisposed at the time of a meeting. Finally, many unit owners give their board their proxy because they are pleased with the manner in which their association is run or they may trust their board to cast their votes. If S.B. 2404 is adopted, all of these unit owners will no longer have the right to give their votes to a proxyholder.

#### **C. Section 4 – Complications With Mail Voting**

The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

Most association bylaws provide for the election of directors by a majority vote at a meeting at which there is a quorum, as opposed to a specific percentage of owners. This measure fails to indicate how associations are to achieve a majority vote when there is no "quorum" because there is no in-person meeting. This short-sightedness will undoubtedly lead to numerous disputes and challenges of elections.

S.B. 2404 is very likely being advanced by a small, vocal minority of owners who are attempting to change the outcome of elections to address real or perceived problems that they have experienced with their associations. If this measure is adopted, thousands of condominium unit owners will be shocked by the drastic changes in the law, the heavy-handed abolition of proxies and the compulsory mail voting and electronic meetings.

For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Respectfully submitted,

M. Anne Anderson

**SB-2404**

Submitted on: 2/4/2024 7:08:53 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Carol Walker	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE S.B. 2404** for the reasons set forth below.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai`i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

S.B. 2404 essentially takes a sledgehammer and arbitrarily and capriciously destroys the statutory scheme without good cause. In doing so, S.B. 2404 deprives unit owners of rights they have had for more than forty years. The proposed changes will very likely result in unanticipated outcomes, challenged elections, continued meetings without a quorum, and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer S.B. 2404 and appoint an advisory group of experts to study the proposed changes and conduct fact finding to ensure that the amendments are necessary to address existing problems, that the amendments will not deprive associations and unit owners of their existing rights, that the replacement text will achieve desired results, and that the text is clear and unambiguous.

**A. Sections 1 and 2 – Proxies are rendered illegal**

S.B. 2404 will radically change the manner in which condominium associations conduct their meetings as it declares proxies illegal. The proxy provisions benefit associations, in part, 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' schedules do not permit them to attend association meetings, or owners simply choose not to attend perhaps because they feel satisfied with the way their associations are being operated and do not feel it is necessary to attend 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 may 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 goodwill 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.

### **1. Section 3 – Mandatory Mail Voting and Electronic Meetings.**

Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings.



Section 3 requires all associations to (1) conduct voting by mail, (2) conduct meetings electronically so that unit owners can attend by “means of internet, teleconference, or other electronic transmission technology,” and (3) vote on matters electronically (except that elections must be conducted by mail).

In addition to making conventional meetings illegal, 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 is silent on the procedure for nominations to the board, whether nominees may submit statements supporting their candidacies, and deadlines and procedures for the various communications. These are critical omissions that will lead to disagreements.

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, and the approval of borrowing. By eliminating voting by proxy, and by mandating that unit owners have the opportunity to attend meetings and vote by internet, teleconference or other electronic transmission technology, voting procedures for all associations will be significantly more complicated and expensive. The Legislature should keep in mind that electronic meetings are relatively new to Hawaii condominiums and require a certain level of technological savvy. For many associations, S.B. 2404 will make holding annual meetings radically more difficult and complex.

Finally, the abolition of proxies will disenfranchise unit owners. Unit owners may not be in a location with internet access at the time of the meeting. Unit owners may have trouble attending meetings because of technological glitches or power outages. Unit owners may not have the computer skills to log onto meetings electronically or they may not own computers. Unit owners may be traveling or otherwise indisposed at the time of a meeting. Finally, many unit owners give their board their proxy because they are pleased with the manner in which their association is run or they may trust their board to cast their votes. If S.B. 2404 is adopted, all of these unit owners will no longer have the right to give their votes to a proxyholder.

Respectfully Submitted,

Carol Walker

**SB-2404**

Submitted on: 2/4/2024 7:15:39 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sharon Heritage	Individual	Oppose	Written Testimony Only

Comments:

Associations should have several options available, not mandated and limited options.

**SB-2404**

Submitted on: 2/4/2024 7:34:30 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Aloha Chair Keohokalole and members of the committee,

Prior to modern technology, proxies allowed condominiums to achieve quorum and let condominium owners still be represented when unable to attend in person. Though in today's day and age, the continued reliance on proxy voting is unnecessary, as owners are able to participate in their condominium's business by multiple other means.

In my condominium, the existence of proxy voting allows owners running for election to the board to physically go door-to-door requesting proxies, essentially as a legal form of ballot harvesting. For owners who do attend the meeting in-person, the vote can feel determined before it is even conducted, while owners who had no choice other than to give their proxy or lose their vote may not have their wishes represented as they might have intended.

This measure is long overdue to bring condominiums into the 21st century. Without it, voter suppression and ballot harvesting runs rampant in condominiums, penalizing those who cannot attend their meetings in person despite mechanisms for still participating being readily available.

Every condominium owner should feel like they had a say in who manages their affairs. With more and more cases emerging of mismanagement and corruption within condos, this bill would allow for increased accountability for board members and greater participation by owners.

*Writing as a member of the Waikiki Neighborhood Board and a 20+ year condominium resident, the benefits of this measure will greatly outweigh the costs of implementation, making your support of this measure a great service to the 1/3 of residents statewide who call a condominium home.*

**SB-2404**

Submitted on: 2/4/2024 8:13:07 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Aaron Cavagnolo	Individual	Support	Written Testimony Only

Comments:

Dear Representatives,

I am writing to express my strong support for Senate Bill SB2404, which seeks to address and rectify the issues surrounding condominium association voting practices. As a concerned member of the AOA Diamond Head Surf Condominium, I have personally experienced the challenges and shortcomings created by the current voting system, leading me to believe that the proposed changes are both necessary and long overdue.

The current state of condominium laws and enforcement within our community has created an environment where unit owners are vulnerable to the actions of AOA boards, property management companies, and their legal representatives. One of the key contributors to this predicament is the misuse of proxies in condominium association voting. The proposed prohibition on the use of proxies for anything other than quorum purposes aligns with my belief that individual owners should have the right to voice their opinions and cast their votes on critical matters that directly affect their homes and well-being.

Moreover, the provisions in Senate Bill SB2404 requiring associations to allow members to vote by mail and participate in association meetings through internet, teleconference, or other electronic transmission technology are crucial steps toward ensuring inclusivity and accessibility in the decision-making process. These provisions acknowledge the evolving nature of communication and technology and provide a framework for modernizing the way associations engage with their members.

The requirement for associations to mail out paper ballots before any annual or periodic election of board members is a commendable addition to the bill. This ensures a fair and transparent election process, allowing all members to have sufficient time to consider their choices and cast their votes without undue influence.

In light of my ongoing struggles with the AOA Diamond Head Surf Condominium Board of Directors and Dynamic Property Management, the proposal in Senate Bill SB2404 resonates strongly with my experiences. Our experience with retaliatory acts and lack of responsiveness from the board highlight the need for legislative measures that empower individual owners and promote accountability within condominium associations.

I believe that the adoption of Senate Bill SB2404 will not only address the systemic issues in our current voting practices but also serve as a safeguard against potential abuses of power by associations. By fostering a more democratic and transparent decision-making process, the bill will contribute to a healthier and more harmonious living environment for all members of condominium communities.

I urge you to support and advocate for the passage of Senate Bill SB2404, as it aligns with the principles of fairness, accountability, and inclusivity that are vital for the well-being of condominium owners.

Thank you for your attention to this matter, and I trust that you will consider the positive impact that Senate Bill SB2404 can have on condominium associations across the state.

Sincerely,

Aaron Cavagnolo

**SB-2404**

Submitted on: 2/4/2024 10:12:42 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Teresa Ahsing	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE S.B. 2404** for the reasons set forth below.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai`i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

S.B. 2404 essentially takes a sledgehammer and arbitrarily and capriciously destroys the statutory scheme without good cause. In doing so, S.B. 2404 deprives unit owners of rights they have had for more than forty years. The proposed changes will very likely result in unanticipated outcomes, challenged elections, continued meetings without a quorum, and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer S.B. 2404 and appoint an advisory group of experts to study the proposed changes and conduct fact finding to ensure that the amendments are necessary to address existing problems, that the amendments will not deprive associations and unit owners of their existing rights, that the replacement text will achieve desired results, and that the text is clear and unambiguous.

**A. Sections 1 and 2 – Proxies are rendered illegal**

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Without the proxy voting provisions in Section 514B-123(b), many associations will find it impossible to obtain a quorum for association meetings. Associations may 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 goodwill 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.

## **B. Section 3 – Mandatory Mail Voting and Electronic Meetings.**

Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings.



Section 3 requires all associations to (1) conduct voting by mail, (2) conduct meetings electronically so that unit owners can attend by “means of internet, teleconference, or other electronic transmission technology,” and (3) vote on matters electronically (except that elections must be conducted by mail).

In addition to making conventional meetings illegal, 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 is silent on the procedure for nominations to the board, whether nominees may submit statements supporting their candidacies, and deadlines and procedures for the various communications. These are critical omissions that will lead to disagreements.

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, and the approval of borrowing. By eliminating voting by proxy, and by mandating that unit owners have the opportunity to attend meetings and vote by internet, teleconference or other electronic transmission technology, voting procedures for all associations will be significantly more complicated and expensive. The Legislature should keep in mind that electronic meetings are relatively new to Hawaii condominiums and require a certain level of technological savvy. For many associations, S.B. 2404 will make holding annual meetings radically more difficult and complex.

Finally, the abolition of proxies will disenfranchise unit owners. Unit owners may not be in a location with internet access at the time of the meeting. Unit owners may have trouble attending meetings because of technological glitches or power outages. Unit owners may not have the computer skills to log onto meetings electronically or they may not own computers. Unit owners may be traveling or otherwise indisposed at the time of a meeting. Finally, many unit owners give their board their proxy because they are pleased with the manner in which their association is run or they may trust their board to cast their votes. If S.B. 2404 is adopted, all of these unit owners will no longer have the right to give their votes to a proxyholder.

#### **C. Section 4 – Complications With Mail Voting**

The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

Most association bylaws provide for the election of directors by a majority vote at a meeting at which there is a quorum, as opposed to a specific percentage of owners. This measure fails to indicate how associations are to achieve a majority vote when there is no "quorum" because there is no in-person meeting. This short-sightedness will undoubtedly lead to numerous disputes and challenges of elections.

S.B. 2404 is very likely being advanced by a small, vocal minority of owners who are attempting to change the outcome of elections to address real or perceived problems that they have experienced with their associations. If this measure is adopted, thousands of condominium unit owners will be shocked by the drastic changes in the law, the heavy-handed abolition of proxies and the compulsory mail voting and electronic meetings.

For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Respectfully submitted,

Teresa Ahsing

**SB-2404**

Submitted on: 2/5/2024 5:52:46 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

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### **B. Section 3 – Mandatory Mail Voting and Electronic Meetings.**

Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings.

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This measure is silent on the procedure for nominations to the board, whether nominees may submit statements supporting their candidacies, and deadlines and procedures for the various communications. These are critical omissions that will lead to disagreements.

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, and the approval of borrowing. By eliminating voting by proxy, and by mandating that unit owners have the opportunity to attend meetings and vote by internet, teleconference or other electronic transmission technology, voting procedures for all associations will be significantly more complicated and expensive. The Legislature should keep in mind that electronic meetings are relatively new to Hawaii condominiums and require a certain level of technological savvy. For many associations, S.B. 2404 will make holding annual meetings radically more difficult and complex.

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### **C. Section 4 – Complications With Mail Voting**

The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

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For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Respectfully submitted,

Paul A. Ireland Koftinow

**SB-2404**

Submitted on: 2/5/2024 7:25:37 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

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

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

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The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

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S.B. 2404 is very likely being advanced by a small, vocal minority of owners who are attempting to change the outcome of elections to address real or perceived problems that they have experienced with their associations. If this measure is adopted, thousands of condominium unit owners will be shocked by the drastic changes in the law, the heavy-handed abolition of proxies and the compulsory mail voting and electronic meetings.

For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Respectfully submitted,  
Lance Fujisaki



**SB-2404**

Submitted on: 2/5/2024 7:31:49 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Carrie Ho	Individual	Support	Written Testimony Only

Comments:

I, Carrie Ho, support this bill because I believe everyone should have the right to vote. Therefore, online voting should be offered. Lastly, we live in the digital world where we can do it, so why not? To make life easier. We must improve and be better with time.

**SB-2404**

Submitted on: 2/5/2024 8:32:34 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Laura Bearden	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE S.B. 2404** for the reasons set forth below.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai`i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

S.B. 2404 essentially takes a sledgehammer and arbitrarily and capriciously destroys the statutory scheme without good cause. In doing so, S.B. 2404 deprives unit owners of rights they have had for more than forty years. The proposed changes will very likely result in unanticipated outcomes, challenged elections, continued meetings without a quorum, and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer S.B. 2404 and appoint an advisory group of experts to study the proposed changes and conduct fact finding to ensure that the amendments are necessary to address existing problems, that the amendments will not deprive associations and unit owners of their existing rights, that the replacement text will achieve desired results, and that the text is clear and unambiguous.

**A. Sections 1 and 2 – Proxies are rendered illegal**

S.B. 2404 will radically change the manner in which condominium associations conduct their meetings as it declares proxies illegal. The proxy provisions benefit associations, in part, 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' schedules do not permit them to attend association meetings, or owners simply choose not to attend perhaps because they feel satisfied with the way their associations are being operated and do not feel it is necessary to attend 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 may 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 goodwill 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.

### **B. Section 3 – Mandatory Mail Voting and Electronic Meetings.**

Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings.

Section 3 requires all associations to (1) conduct voting by mail, (2) conduct meetings electronically so that unit owners can attend by “means of internet, teleconference, or other electronic transmission technology,” and (3) vote on matters electronically (except that elections must be conducted by mail).

In addition to making conventional meetings illegal, 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 is silent on the procedure for nominations to the board, whether nominees may submit statements supporting their candidacies, and deadlines and procedures for the various communications. These are critical omissions that will lead to disagreements.

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, and the approval of borrowing. By eliminating voting by proxy, and by mandating that unit owners have the opportunity to attend meetings and vote by internet, teleconference or other electronic transmission technology, voting procedures for all associations will be significantly more complicated and expensive. The Legislature should keep in mind that electronic meetings are relatively new to Hawaii condominiums and require a certain level of technological savvy. For many associations, S.B. 2404 will make holding annual meetings radically more difficult and complex.

Finally, the abolition of proxies will disenfranchise unit owners. Unit owners may not be in a location with internet access at the time of the meeting. Unit owners may have trouble attending meetings because of technological glitches or power outages. Unit owners may not have the computer skills to log onto meetings electronically or they may not own computers. Unit owners may be traveling or otherwise indisposed at the time of a meeting. Finally, many unit owners give their board their proxy because they are pleased with the manner in which their association is run or they may trust their board to cast their votes. If S.B. 2404 is adopted, all of these unit owners will no longer have the right to give their votes to a proxyholder.

#### **C. Section 4 – Complications With Mail Voting**

The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

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S.B. 2404 is very likely being advanced by a small, vocal minority of owners who are attempting to change the outcome of elections to address real or perceived problems that they have experienced with their associations. If this measure is adopted, thousands of condominium unit owners will be shocked by the drastic changes in the law, the heavy-handed abolition of proxies and the compulsory mail voting and electronic meetings.

For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Respectfully submitted,

Laura Bearden



Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE S.B. 2404** for the reasons set forth below.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai'i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

S.B. 2404 essentially takes a sledgehammer and arbitrarily and capriciously destroys the statutory scheme without good cause. In doing so, S.B. 2404 deprives unit owners of rights they have had for more than forty years. The proposed changes will very likely result in unanticipated outcomes, challenged elections, continued meetings without a quorum, and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer S.B. 2404 and appoint an advisory group of experts to study the proposed changes and conduct fact finding to ensure that the amendments are necessary to address existing problems, that the amendments will not deprive associations and unit owners of their existing rights, that the replacement text will achieve desired results, and that the text is clear and unambiguous.

#### **A. Sections 1 and 2 – Proxies are rendered illegal**

S.B. 2404 will radically change the manner in which condominium associations conduct their meetings as it declares proxies illegal. The proxy provisions benefit associations, in part, 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' schedules do not permit them to attend association meetings, or owners simply choose not to attend perhaps because they feel satisfied with the way their associations are being operated and do not feel it is necessary to attend 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



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Without the proxy voting provisions in Section 514B-123(b), many associations will find it impossible to obtain a quorum for association meetings. Associations may 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 goodwill 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.

### **B. Section 3 – Mandatory Mail Voting and Electronic Meetings.**

Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings.

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This measure is silent on the procedure for nominations to the board, whether nominees may submit statements supporting their candidacies, and deadlines and procedures for the various communications. These are critical omissions that will lead to disagreements.

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, and the approval of borrowing. By eliminating voting by proxy, and by mandating that unit owners have the opportunity to attend meetings and vote by internet, teleconference or other electronic transmission technology, voting procedures for all associations will be significantly more complicated and expensive. The Legislature should keep in mind that electronic meetings are relatively new to Hawaii condominiums and require a certain level of technological savvy. For many associations, S.B. 2404 will make holding annual meetings radically more difficult and complex.

Finally, the abolition of proxies will disenfranchise unit owners. Unit owners may not be in a location with internet access at the time of the meeting. Unit owners may have trouble attending meetings because

of technological glitches or power outages. Unit owners may not have the computer skills to log onto meetings electronically or they may not own computers. Unit owners may be traveling or otherwise indisposed at the time of a meeting. Finally, many unit owners give their board their proxy because they are pleased with the manner in which their association is run or they may trust their board to cast their votes. If S.B. 2404 is adopted, all of these unit owners will no longer have the right to give their votes to a proxyholder.

### **C. Section 4 – Complications With Mail Voting**

The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

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S.B. 2404 is very likely being advanced by a small, vocal minority of owners who are attempting to change the outcome of elections to address real or perceived problems that they have experienced with their associations. If this measure is adopted, thousands of condominium unit owners will be shocked by the drastic changes in the law, the heavy-handed abolition of proxies and the compulsory mail voting and electronic meetings.

For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Respectfully,

Pamela J. Schell

**LATE**

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE S.B. 2404** for the reasons set forth below.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai'i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

S.B. 2404 essentially takes a sledgehammer and arbitrarily and capriciously destroys the statutory scheme without good cause. In doing so, S.B. 2404 deprives unit owners of rights they have had for more than forty years. The proposed changes will very likely result in unanticipated outcomes, challenged elections, continued meetings without a quorum, and litigation. If the Legislature finds that Sections 514B-121, 123 and 124.5 require a major overhaul, the Legislature should defer S.B. 2404 and appoint an advisory group of experts to study the proposed changes and conduct fact finding to ensure that the amendments are necessary to address existing problems, that the amendments will not deprive associations and unit owners of their existing rights, that the replacement text will achieve desired results, and that the text is clear and unambiguous.

#### **A. Sections 1 and 2 – Proxies are rendered illegal**

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Section 3 of this measure is radical in that it makes illegal what associations have been doing for the past sixty years. Section 3 will make it “illegal” for condominium associations to conduct conventional in person meetings, in which all unit owners register and attend meetings in person (or by proxy), unit owners vote in person (or by proxy), and unit owners make motions to nominate candidates to the board during the meetings.

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### **C. Section 4 – Complications With Mail Voting**

The measure does not specify the time requirements to distribute and return ballots, which is an important omission. Among the problems with voting by mail is that many owners reside in foreign countries. International mail service can be extremely slow, even to nearby countries, such as Canada. To provide unit owners with sufficient time to receive, review, and return ballots to their association's secretary or managing agent, the ballots will have to be mailed at least two months before meetings. However, many things can happen from the date of mailing to the date of the meeting, including board vacancies that may not be filled by mailed ballots.

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For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Respectfully submitted,

Laurie Sokach AMS, PCAM

Senior Community Portfolio Manager

**LATE**

**LATE**

**SB-2404**

Submitted on: 2/5/2024 2:51:48 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Esther Gefroh	Individual	Support	Written Testimony Only

Comments:

To Whom it May Concern:

I am writing in support of this bill.

I am a condo owner and feel there should be a better representation of the owners on the board. This is not necessarily true when proxies are involved.

Thank you for your time,

Sincerely yours,

**LATE**

**LATE**

**SB-2404**

Submitted on: 2/5/2024 3:40:46 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sue Pliszka	Individual	Support	Written Testimony Only

Comments:

Support

**SB-2404**

Submitted on: 2/5/2024 5:43:21 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

**LATE**

**LATE**

Submitted By	Organization	Testifier Position	Testify
Vince Costanzo	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Keohokalole, Chair, Senator Fukunaga, Vice Chair, and Members of the Committee:

**I STRONGLY OPPOSE S.B. 2404** for the reasons set forth below.

For over forty years, Chapter 514 (repealed in 1977), Chapter 514A (repealed in 2017), and Chapter 514B (the Condominium Property Act) of the Hawai`i Revised Statutes have authorized members of condominium associations to appoint proxies to vote in their place at association meetings. Sections 514B-121, 123 and 124.5, and their predecessors, have been tweaked and fine-tuned by the Legislature over the past decades. The community of association boards, association members, management companies, parliamentarians and community association attorneys have used these provisions to conduct thousands of association meetings. Over the decades, tens of thousands of unit owners have used proxies to ensure that their votes were counted in their absence, and to allow their associations to achieve a quorum at meetings.

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For the foregoing reasons, I urge the Committee to defer S.B. 2404.

Respectfully submitted,

Vincent Costanzo