

Testimony of the Real Estate Commission

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

**On the following measure:
H.B. 1161, RELATING TO BOARD MEMBERS**

Chair Hashimoto and Members of the Committee:

My name is Derrick Yamane, and I am the Chairperson of the Real Estate Commission (Commission). The Commission opposes this bill with respect to the provisions pertaining to Hawaii Revised Statutes (HRS) chapter 514B (Condominiums). The Commission does not enforce HRS chapters 421I (Cooperative Housing Corporations) or 421J (Planned Community Associations).

The purpose of this bill is to require members boards of directors and officers of the condominium associations, cooperative housing corporations, and planned community associations to certify the receipt and reading of certain documents or complete a board leader course from an instructor certified by the Community Associations Institute, or similar nationally recognized organization.

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

Thank you for the opportunity to testify on this bill.



February 13, 2023

VIA WEB TRANSMITTAL

Hearing Date: Wednesday, February 15, 2023

Time: 9.30 AM

Venue: Video Conference Room 312, State Capitol

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Senate Committee on Commerce and Consumer Protection

Re : Hawaii Chapter, Community Associations Institute's
Testimony in SUPPORT with Amendments of HB 1161

Dear Chair Keohokalole, Vice-Chair Fukunaga and Committee Members

CAI supports **HB 1161** in educating and training of Board Members to understand their responsibilities and fulfill their fiduciary duty to a Community Association, but State mandated requirements must be carefully evaluated.

Community Association Board Members are essentially volunteers elected by their co-owners and serve for altruistic reasons with the best interests of their communities in mind. The existing law, HRS514B has impose a level of care and loyalty on Board Members to their Associations to the level and extent required of an officer or director of a corporation organized under chapter 414D. As such, it is imperative that Board Members receive proper education and training, however, any State mandated education requirement should be focused on incentives and tools to encourage Boards to utilize existing industry resources to achieve educational goals rather than create new processes or burdens.

CAI proposes the following amendment to the language used in **HB 1161** for the Committee's consideration (deletion marked by ~~striketrough~~, and addition marked in ***bold italics***):

Within ninety days after being elected or appointed to the board, each officer and member shall:

- (1) Certify in writing to the secretary of the corporation/association that the officer or member has received and read the corporation/association's articles of incorporation, declaration, articles, bylaws, and house rules; or
- (2) ~~Obtain a board leader course completion certificate from an instructor certified by the Community Associations Institute, or similar nationally recognized organization~~**Certify in writing to the secretary of the association that the officer or member will work to uphold such corporation/association documents and policies, and fulfill their fiduciary duties to the corporation/association's members.**

The association shall retain each officer and member's written certification ~~or course completion certificate~~ for the duration of their term. ***Board members are encouraged to engage in training to increase their level of knowledge, professionalism, competence, and effectiveness as leaders of the corporation/association. Notwithstanding anything provided herein, Failure by any Board Member to have such written certification does not affect the validity of any board action.***

There are many Associations that are having difficulty finding members who are willing to volunteer, run for Board position, and serve as directors or officers. CAI is concerned that imposing the proposed mandate on obtaining training from a specific type of instructor may further damp interests among owners to serve as Association directors or officers.

In conclusion, CAI supports **HB 1161** with amendment as proposed above. Board education requirements should be focused on a policy that inspires enlightened leadership and effective utilization of existing resources rather than a mandatory requisite that potentially serves to deter homeowner volunteers from serving on Association boards.

Sincerely

Selkie Khoo

Selkie Khoo

CAI LAC Hawaii

HB-1161

Submitted on: 2/13/2023 12:38:03 PM

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

Submitted By	Organization	Testifier Position	Testify
Idor Harris	Honolulu Tower AOA	Oppose	Written Testimony Only

Comments:

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

Included in those provisions are requiring directors to certify in writing compliance with their duties and required training for board members.

The board also believes that if laws create more work, that will increase costs for both the associations and management companies and staff will have to do the work, taking them away from other duties.

Idor Harris

Resident Manager, Honolulu Tower

HB-1161

Submitted on: 2/13/2023 6:17:57 PM

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

Submitted By	Organization	Testifier Position	Testify
Mark McKellar	Law Offices of Mark K. McKellar, LLC	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 1161. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burdens on condominium associations and planned community associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, H.B. 1161 will do far more harm than good.

H.B. 1161 is unnecessary because board members already have a statutory fiduciary duty to their associations. Section 514B-106 of the Hawaii Revised Statutes (“HRS”) provides that, “In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

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

It is extremely rare for a planned community association not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making H.B. 1161 unnecessary.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, H.B. 1161 will raise numerous problems for community associations, CAI and property management companies.

First, H.B. 1161 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to retain board members' written certificates or course completion certificates, in practice, imposing legal requirements for this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000.

Second, H.B. 1161 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will H.B. 1161 affect the validity of actions taken by boards, when disqualified members voted on measures before the boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended?

Third, like legislators, some board members remain in office for many years. H.B. 1161 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, H.B. 1161 will discourage many association members from serving on boards. Any director who fails to sign a written certificate or complete a board leader course will be acting in

violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability. Furthermore, in light of H.B. 1161, by having to read the governing documents, or complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they read the governing documents, or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under H.B. 1161. Additionally, it is not likely that CAI or any other organization would be equipped to educate all of the serving directors in Hawaii, since there are probably in excess of 10,000 directors serving at any given time.

Sixth, H.B. 1161 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although H.B. 1161 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if H.B. 1161 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

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

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Mark McKellar

HB-1161

Submitted on: 2/13/2023 6:37:43 PM

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

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Palehua Townhouse Assoiciation	Oppose	Written Testimony Only

Comments:

Palehua Townhouse Association opposes HB1161. Our board has a fiduciary responsibility to our association and as such must keep up with their review of documents and attend various trainings when they are available to do so. Please defer this bill.

Mike Golojuch, Sr., President



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

February 13, 2023

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

RE: Testimony in OPPOSITION to HB1161; Hearing Date: February 15, 2023 at 9:30 a.m. in House Comm. conference room 312/videoconference; sent via Internet

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

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

The Hawaii State Association of Parliamentarians (“HSAP”) has been providing professional parliamentary expertise to Hawaii since 1964.

I am the chair of the HSAP Legislative Committee. I’m also an experienced Professional Registered Parliamentarian who has worked with condominium and community associations every year since I began my parliamentary practice in 1983 (more than 2,000 meetings in 40 years). I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2004.

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

This testimony is presented in OPPOSITION to HB1161.

Summary of Bill

The bill proposes to mandate certification that a board member has received and read numerous documents, complete a course of training, and retain a certificate of completion.

It proposed to require reading and training for Cooperatives, Planned Community Associations, and Condominium Associations.

Comments

The desire to require training is an admirable one. We believe it is well-intentioned. Unfortunately, it is not realistic. We'll address each are that the bill proposes to amend.

Planned Community Associations: (Chapter 421J; Section 2, starting on page 2, line 18)

We don't even know how many Planned Community Associations exist. They can vary from 2 adjacent lots that maintain a road to an entity such as Mililani Town Association with about 8,934 households.

The bill proposes to amend HRS §421J-3 titled "Board of Directors." However, it inconsistently adds this requirement to officers (Page 3, line 9) whose membership on the board depends upon the bylaws.

There's no existing registration of Planned Community Associations and this may be unenforceable.

Cooperatives: (Chapter 421I; Section 1, starting on page 1, line 1)

There are only a few cooperatives, most of them in Waikiki. In my experience, many of them have converted to condominiums and others have consistently had problems obtaining new board members.

There's no existing registration of Planned Community Associations and this may be unenforceable.

Condominiums: (Chapter 514B; Section 2, starting on page 2, line 16):

The bill proposes to amend HRS §514B-106 titled, "Board; powers and duties." However, it inconsistently adds this requirement to officers (Page 8, line 4) whose membership on the board depends upon the bylaws. For example, some boards elect assistant treasurers who are not board members.

With about 2,000 condominium associations in Hawaii and an estimated average of about 5 directors, this would total about 10,000 board members requiring course completion within 90 days of their election or appointment.

As an experienced and nationally recognized instructor, I believe it is possible to construct a course with an attorney and property manager to establish a \$100 course for each of these 10,000 board members for an 8 hour class during the summer.

This would total about \$1,000,000.

HRS §514B-61 provides enforcement authority for the Real Estate Commission. This is related to Chapter 514B which applies to condominium associations. There is no such statement of authority for Planned Community Associations (Chapter 421J) and Cooperatives (Chapter 421I).

The bill also fails to address the issue of whether or when directors and officers should be required to have a refresher when the law or their governing documents change.

The bill requires certification of reading and course completion after being elected to the board. There are some boards where the members only receive 1 year terms. They would have to take this course every year.

Board members may be exposed to breach of fiduciary claims if they can't substantiate reading the documents or completing this course.

These are only a few of the unintended consequences. In an era when it is difficult to obtain board members to serve, this bill would cause more harm than good to our community.

Conclusion:

We believe that the bill, though well-intentioned, is not realistic and unworkable. We respectfully ask that the Committee defer or hold this bill.

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

Sincerely,

Steve Glanstein

Steve Glanstein, Professional Registered Parliamentarian
Chair, HSAP Legislative Committee

Testimony In Support of HB1161

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

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

I strongly support HB1161.

I would like to point out that the first committee referral for HB1161 should have been to the “subject matter committee,” which is Consumer Protection & Commerce (CPC). The referral to the Housing Committee was not necessary, and as such HB176 should be properly referred to CPC and a hearing scheduled ASAP. This continuing trend this session, of condominium related Bills incorrectly being referred to the Housing Committee, only highlights the legislative process is flawed, and some legislators have no regard for fairness or the process that they oversee.

HB1161 will provide much needed Board of Directors training and certification and will eliminate the “excuses” often made by Directors when they improperly conduct AOA business, “that they are just volunteers.” Those in the military who are volunteers are required to go through training, and are certified that they are ready for deployment and to protect our country. A seat on any Board of Directors must be filled by qualified candidates, and the “volunteer” excuse was and is unacceptable. The results can clearly be seen in the many mismanaged Associations throughout Hawaii. Those on the Board need to be required to go through mandatory training and certification, so they know what is expected of them and their Fiduciary Duty.

My personal experience at my Association has confirmed what every legislator needs to know, that there are many unqualified Directors on the Board and this is negatively impacting my Association. This is repeated all across Associations throughout Hawaii, and I have heard this from many concerned condominium owners. Abuse of power and malfeasance are the result, and the solution begins with HB1161, followed by an Ombudsman’s Office to oversee condominium and HOAs.

Directors on Association Boards need to know their responsibilities and duties, and read and understand HRS 514B and their Governing Documents. Abuse of their positions also needs to result in oversight and enforcement by the Hawaii Attorney General’s office, until an Ombudsman is in place.

I ask the Committee and all State Legislators to please support HB1161.

And I ask you to support and act on HB176, HB178, HB1501, and HB1297, which were introduced by the Kokua Council on behalf of our kupuna and all residents of Hawaii.

Mahalo,

Gregory Misakian

2nd Vice President, Kokua Council
Board Member, Waikiki Neighborhood Board

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

Rachel M. Glanstein
1099 Ala Napunani St #901
Honolulu HI 96818
rglanstein@gmail.com

February 14, 2023

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

RE: Testimony in Opposition to HB1161

Aloha,

Thank you for the opportunity to provide testimony on this bill. This testimony is provided in opposition to HB1161. Please defer or hold this bill.

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

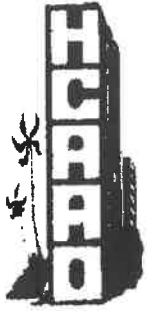
I also serve as secretary for my own condo board. My board should have five members, but we have had two vacancies for a few years now because people don't want to serve. The problem is not that there are too many candidates for board service – it's that there are too few.

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

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

Mahalo,

Rachel M. Glanstein



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



February 14, 2023

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

Re: Testimony in Support of
HB1161 Board Members (w/amendments)
Hearing: Wednesday, February 15, 2023, 9:30 a.m., Conf. Rm. #312

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

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

HCCA strongly supports the intent and purpose of HB1161 and believes that requiring board members to acknowledge receipt and review of their governing documents and to obtain certification that they have completed a training course in community association governance would improve their decision-making and governance skills and may minimize disputes by and among owners and their boards.


HCCA suggest the following amendments:

- Require board members to comply with both the requirement to (i) certify in writing that they have received **and reviewed** their governing documents and **a copy of Chapters 421I, 421J or 514B** and complete a training or education course in governance. At line page 2, line 8, and at page 3, line 12 and at page 8, line 8, **change “or” to “and”**.
- Require all board members to (i) certify receipt and review of their governing documents and their applicable HRS chapter within 90 days after the effective date of bill and not their election since most association by-laws call for staggered terms and (ii) complete their training/education within 1 year from the effective date of the bill.
- The training/education should be done under the direction of the Real Estate Commission after first obtaining input from stakeholders as to the curriculum to be used. Since board training may likely result in reduction of condo disputes, the Real

Estate Commission should be allowed to use condo-education funds to implement the educational program as to condo boards. With respect to 421I and 421J entities, a new provision should be added to require registration with the DCCA and separate education funds set up for those entities to be used to implement the educational requirements under this bill for those entities. Rather than requiring board members to attend training classes I suggest that the Real Estate Commission use the funds to develop a professional video that board members can view on online and receive certification.

- Include a provision that failure to comply with both requirements would disqualify a board member from serving on his or her board.
- Make the effective date of this bill January 1, 2024.

Thank you for the opportunity to testify on this matter.



Jane Sugimura, President

LATE

HB-1161

Submitted on: 2/14/2023 5:14:16 PM

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

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

Comments:

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

I OPPOSE H.B. 1161. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burden on condominium associations and planned community associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, H.B. 1161 will do far more harm than good.

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

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Primrose K. Leong-Nakamoto (S)

HB-1161

Submitted on: 2/13/2023 12:00:02 PM

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

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

Comments:

Please accept this as testimony in strong opposition to a bill that was introduced by request and those affected do not know who that person/entity is.

I live in a high rise condominium on the outskirts of Honolulu's Chinatown. All owners, including board members, have access to the governing documents. If you want to make this a requirement, something that is covered in other bills, I suggest you require it of all owners, so when they come to complain, file lawsuits, etc. they will have acknowledged that they fully understand their rights and duties and will comply.

You should also realize that people will sign anything if it makes their lives easier. Or, perjure themselves at a grand jury which some members of a Georgia grand jury dealing with tampering the 2020 election have alleged.

HB-1161

Submitted on: 2/13/2023 3:30:41 PM

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

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

Comments:

There is a balance to be achieved between assuring basic board awareness of relevant documentation and the erection of potential barriers to volunteer service. Certification that a board member has received and read such documentation may be supportable. The mechanism of certification may benefit from some adjustment.

HB-1161

Submitted on: 2/13/2023 4:56:46 PM

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

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

Comments:

I SUPPORT HB 1161.

Board members are entrusted with an incredible amount of power and too often they have used that power to great harm of individual Owners, either on purpose or on accident out of ignorance. This Bill is needed because Hawai'i has a huge outsized number of lawsuits against Board members for breaching their fiduciary duties to the AOA, which has resulted in rising insurance costs for everybody.

If someone does not want to know the rules of the AOA then they have no business being on the Board in the first place and will likely cause more harm than good.

There will likely be a transition period, but providing education for Board members is not a massively difficult problem and I'm sure the Property Managers and CAI will find a solution to this problem.

Thank you for the opportunity to provide testimony,

Jeff Sadino

Committee on Housing

HB-1161

Submitted on: 2/13/2023 5:07:01 PM

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

Submitted By	Organization	Testifier Position	Testify
Paul A. Ireland Koftinow	Individual	Oppose	Remotely Via Zoom

Comments:

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

I OPPOSE H.B. 1161. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burdens on condominium associations and planned community associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, H.B. 1161 will do far more harm than good.

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

It is extremely rare for a planned community association not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making H.B. 1161 unnecessary.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, H.B. 1161 will raise numerous problems for community associations, CAI and property management companies.

First, H.B. 1161 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to retain board members' written certificates or course completion certificates, in practice, imposing legal requirements for this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000.

Second, H.B. 1161 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will H.B. 1161 affect the validity of actions taken by boards, when disqualified members voted on measures before the boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended?

Third, like legislators, some board members remain in office for many years. H.B. 1161 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, H.B. 1161 will discourage many association members from serving on boards. Any director who fails to sign a written certificate or complete a board leader course will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability. Furthermore, in light of H.B. 1161, by having to read the governing documents, or complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they read the governing documents, or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under H.B. 1161. Additionally, it is not likely that CAI or any other organization would be equipped to educate all of the serving directors in Hawaii, since there are probably in excess of 10,000 directors serving at any given time.

Sixth, H.B. 1161 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although H.B. 1161 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if H.B. 1161 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

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

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Paul A. Ireland Koftinow

HB-1161

Submitted on: 2/13/2023 6:33:08 PM

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

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Individual	Oppose	Written Testimony Only

Comments:

First there is no current course by CAI to accomplish this education requirement. Frankly more than 50% of Hawaii's condos are less than 50 units and this is a burden in attracting volunteer board members. Board members are not licensed. A statement that a board member read the documents serves no purpose. Boards rely on lawyers to advise and address association needs.

HB-1161

Submitted on: 2/13/2023 7:55:31 PM

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

Submitted By	Organization	Testifier Position	Testify
mary freeman	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 1161. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burdens on condominium associations and planned community associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, H.B. 1161 will do far more harm than good.

H.B. 1161 is unnecessary because board members already have a statutory fiduciary duty to their associations. Section 514B-106 of the Hawaii Revised Statutes (“HRS”) provides that, “In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

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

It is extremely rare for a planned community association not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making H.B. 1161 unnecessary.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, H.B. 1161 will raise numerous problems for community associations, CAI and property management companies.

First, H.B. 1161 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to retain board members' written certificates or course completion certificates, in practice, imposing legal requirements for this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000.

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For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Mary Freeman

Ewa Beach

Lourdes Scheibert
2/14/2023

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

I support HB1161

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

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

Two publications that stands out for me:

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

Motooka's advise coupled with CAI Hawaii 2009 publication recognizes & supports that board directors need education & certification as outlined in HB1161. In my opinion.

Sue Savio, Insurance Associates as a speaker for CAI & HCCA's programs say lawsuits by condominium owners are on the rise. The increase of paid out Directors & Officers insurance claims in Hawaii per capita is high in the nation. Blaring indicator for HB1161.

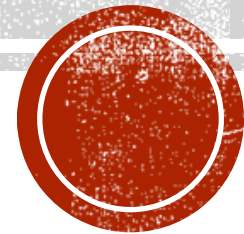
Thank-you,

Lourdes Scheibert
A Condo Owner in Kakaako

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

SIMPLE STEPS TO AVOID LAWSUITS

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



III. TEN TIPS FOR AVOIDING **LITIGATION**



TEN TIPS FOR AVOIDING LITIGATION

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

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



TEN TIPS FOR AVOIDING LITIGATION

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

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



TEN TIPS FOR AVOIDING LITIGATION

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

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



WHAT YOU CAN DO

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





PRESIDENT'S MESSAGE

Aloha!

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

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

continued on page 2

STUPID THINGS BOARD MEMBERS SAY

By Lillian McCarthy, AMS®, PCAM®

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

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

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

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

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

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

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

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

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

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

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

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

continued on page 4

STUPID THINGS BOARD MEMBERS SAY *continued from page 1*

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

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

"Build a special assessment into the budget."

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

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

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

"What is fiduciary duty?"

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

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

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

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

The statutes do not permit board members vote by proxy.

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

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

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

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

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

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

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

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

"Shut up and sit down."

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

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

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

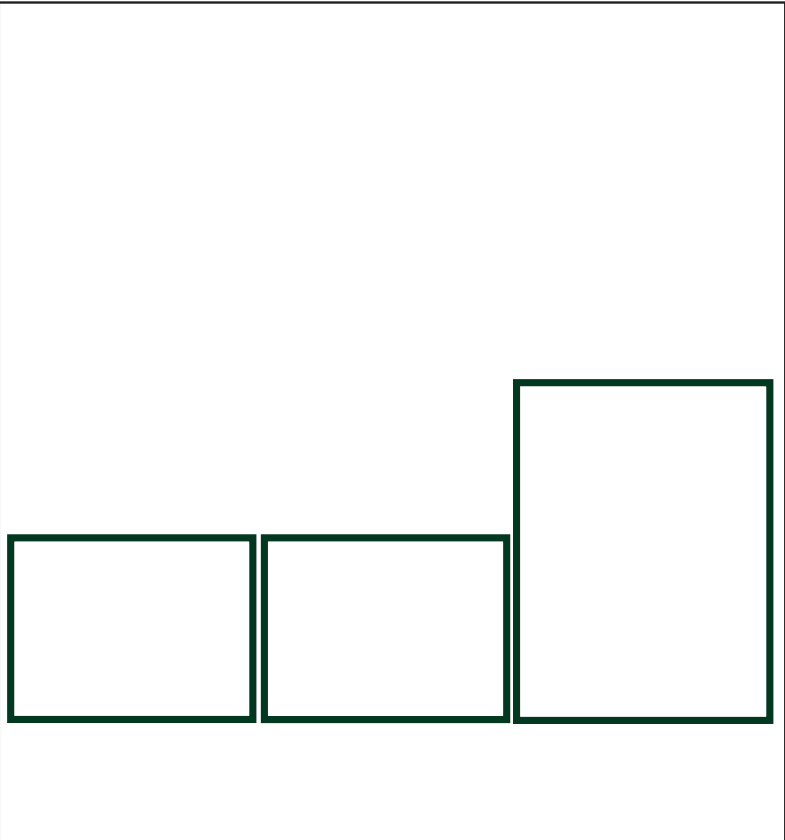
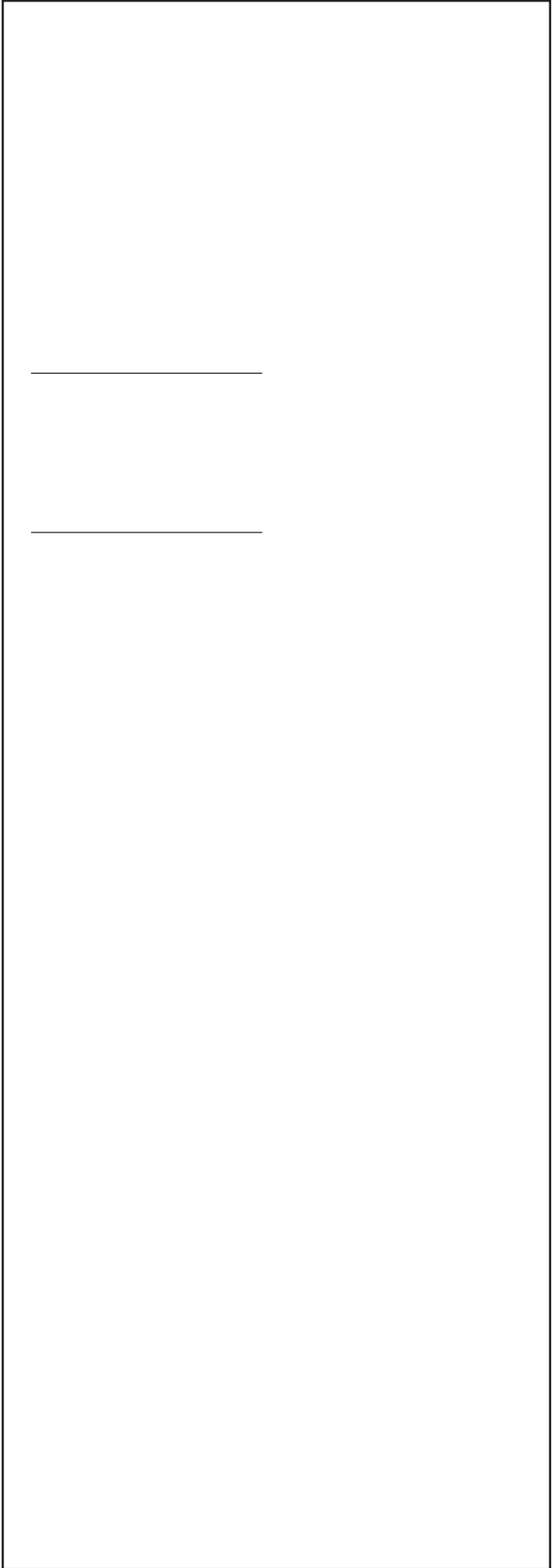
“I don’t like that owner. Let’s not approve his alteration.” This is clearly discrimination and subject to a potential lawsuit including a Hawaii Civil Rights Complaint. Board members must always place their own feelings aside and do what is right regardless of how they feel about the owner.

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

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

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

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



HB-1161

Submitted on: 2/14/2023 6:07:58 AM

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

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

Comments:

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

I OPPOSE H.B. 1161. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association's governing documents, or (2) obtain a "leader course completion certificate from an instructor certified by the Community Associations Institute ("CAI"), or similar nationally recognized organization." I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burdens on condominium associations and planned community associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, H.B. 1161 will do far more harm than good.

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It is extremely rare for a planned community association not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making H.B. 1161 unnecessary.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, H.B. 1161 will raise numerous problems for community associations, CAI and property management companies.

First, H.B. 1161 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to retain board members' written certificates or course completion certificates, in practice, imposing legal requirements for this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000.

Second, H.B. 1161 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will H.B. 1161 affect the validity of actions taken by boards, when disqualified members voted on measures before the boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended?

Third, like legislators, some board members remain in office for many years. H.B. 1161 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

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

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Lance Fujisaki

HB-1161

Submitted on: 2/14/2023 8:04:17 AM

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

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

Comments:

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Sixth, H.B. 1161 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although H.B. 1161 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if H.B. 1161 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

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

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Carol Walker

HB-1161

Submitted on: 2/14/2023 8:39:04 AM

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

Submitted By	Organization	Testifier Position	Testify
Lila Mower	Individual	Comments	Written Testimony Only

Comments:

I support the INTENT of HB 1161 and suggest replacing the proposed changes in 421I-3(d), 421J-3(c), and 514B-106(g) with:

Within ninety days after being elected or appointed to the board, each newly elected or appointed director shall certify in writing to the secretary of the association that the director:

(1) Has read the association's declaration, articles of incorporation, bylaws, house rules, and other association documents necessary for the operation of the property;

(2) Shall work to uphold the association's declaration, articles of incorporation, bylaws, house rules, and other association documents to the best of the director's ability; and

(3) Shall faithfully discharge the director's fiduciary duty to the association.

The written certification shall be valid for the entirety of the director's uninterrupted term of office. A director who fails to timely file the written certification shall be automatically suspended from service on the board until the director complies with this subsection. The board may appoint a member to temporarily fill the vacancy during the director's period of suspension. The secretary shall retain a director's written certification for inspection by association members for five years after a director's election or appointment, or the duration of the director's uninterrupted term of office, whichever is longer. Failure to have a written certification on file shall not affect the validity of any board action.

HB-1161

Submitted on: 2/14/2023 9:14:19 AM

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

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

Comments:

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

I OPPOSE H.B. 1161. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burdens on condominium associations and planned community associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, H.B. 1161 will do far more harm than good.

H.B. 1161 is unnecessary because board members already have a statutory fiduciary duty to their associations. Section 514B-106 of the Hawaii Revised Statutes (“HRS”) provides that, “In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

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

It is extremely rare for a planned community association not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making H.B. 1161 unnecessary.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, H.B. 1161 will raise numerous problems for community associations, CAI and property management companies.

First, H.B. 1161 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to retain board members' written certificates or course completion certificates, in practice, imposing legal requirements for this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000.

Second, H.B. 1161 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will H.B. 1161 affect the validity of actions taken by boards, when disqualified members voted on measures before the boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended?

Third, like legislators, some board members remain in office for many years. H.B. 1161 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, H.B. 1161 will discourage many association members from serving on boards. Any director who fails to sign a written certificate or complete a board leader course will be acting in violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability. Furthermore, in light of H.B. 1161, by having to read the governing documents, or complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they read the governing documents, or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under H.B. 1161. Additionally, it is not likely that CAI or any other organization would be equipped to educate all of the serving directors in Hawaii, since there are probably in excess of 10,000 directors serving at any given time.

Sixth, H.B. 1161 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although H.B. 1161 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if H.B. 1161 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

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

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Laura Bearden

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

I **OPPOSE H.B. 1161** as it requires planned community association and condominium association board members to certify that they have received and read the association's governing documents, or obtain a leader course completion certificate because it is unnecessary given the existing legal requirements,

Board members already have a statutory fiduciary duty to their associations. Section 514B-106 of the Hawaii Revised Statutes ("HRS") provides that directors owe the association a fiduciary duty and must exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.

The Hawaii Nonprofit Corporations Act imposes duties upon directors and officers to discharge their duties in good faith, with a duty of loyalty to the association, with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the director or officer reasonably believes to be in the best interests of the corporation.

H.B. 1161 will impose major administrative burdens on associations and property management companies. Imposing legal requirements for this type of record keeping will be extremely burdensome because of the frequent changes in the persons serving on boards, the changes in property management firms and/or the frequent changes in property managers assigned to specific associations and the number of persons serving on boards.

If board members are deemed disqualified from serving on a board, how will H.B. 1161 affect the validity of actions taken by boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended?

H.B. 1161 will discourage many association members from serving on boards. Any director will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. Also, H.B. 1161 does not specify details on the requirements of "board leader courses," and there are no procedures for issuing instructor certifications.

This bill will be overly burdensome on associations and will lead to confusion and conflicts. The administrative burden will add to the cost of operating an association.

I urge the committee to permanently defer this bill.

Sincerely,

/s/ Pamela J. Schell

LATE

HB-1161

Submitted on: 2/14/2023 10:21:25 AM

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

Submitted By	Organization	Testifier Position	Testify
Leimomi Khan	Individual	Support	Written Testimony Only

Comments:

Fully support. The provisions of this bill will help Board of Directors to fully understand their role and responsibilities and the documents that govern condominiums.

HB-1161

Submitted on: 2/14/2023 1:49:41 PM
Testimony for HSG on 2/15/2023 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Testify
Nani Jay Kuualoha Lavin	Individual	Oppose	Written Testimony Only

Comments:

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

I OPPOSE H.B. 1161. This measure is intended to require planned community association and condominium association board members to (1) certify that they have received and read the association’s governing documents, or (2) obtain a “leader course completion certificate from an instructor certified by the Community Associations Institute (“CAI”), or similar nationally recognized organization.” I oppose this measure because it is unnecessary given the existing legal requirements, it will impose an unreasonable administrative burden on condominium associations and planned community associations, it will likely make it more difficult for associations to recruit members to serve on boards, it will complicate the operation of associations, and it could indirectly expose board members to personal liability. On balance, H.B. 1161 will do far more harm than good.

H.B. 1161 is unnecessary because board members already have a statutory fiduciary duty to their associations. Section 514B-106 of the Hawaii Revised Statutes (“HRS”) provides that, “In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.”

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

It is extremely rare for a planned community association not to be incorporated under Chapter 414D. Therefore, Sections 414D-149 and 414D-155 apply to nearly every planned community association, making H.B. 1161 unnecessary.

Although an ordinarily prudent person serving on an association board should read the governing documents, or attend a seminar on leadership presented by CAI, H.B. 1161 will raise numerous problems for community associations, CAI and property management companies.

First, H.B. 1161 will impose major administrative burdens on associations and property management companies. Although it may seem to be a simple thing to require associations to retain board members' written certificates or course completion certificates, in practice, imposing legal requirements for this type of record keeping will be extremely burdensome for several reasons: (1) the frequent changes in the persons serving on boards, (2) the changes in board members that occur when owners sell units or resign from boards, which can occur at any time, (3) the changes in property management firms, (4) the frequent changes in property managers assigned to specific associations as employees are reassigned or resign, and (5) the number of persons serving on boards. There are approximately 1,500 condominium associations registered in Hawaii and hundreds of planned community associations. Although I am not aware of statistics on the total number of board positions for all community associations in Hawaii, the number of positions probably exceeds 10,000.

Second, H.B. 1161 does not address what will happen if a certificate is misplaced or lost, or if a board member fails to sign a certificate. If board members are deemed disqualified from serving on a board, how will H.B. 1161 affect the validity of actions taken by boards, when disqualified members voted on measures before the boards? If a member is deemed disqualified, will that require boards to retroactively recalculate whether a quorum was achieved at every meeting the member attended?

Third, like legislators, some board members remain in office for many years. H.B. 1161 does not address what happens if a serving director is elected to a succeeding term. Will the director be required to sign a new certificate or take a new course within ninety days of being re-elected at the end of a term? Will an association be required to keep copies of all certificates signed or obtained by a director during the course of serving multiple successive terms?

Fourth, H.B. 1161 will discourage many association members from serving on boards. Any director who fails to sign a written certificate or complete a board leader course will be acting in

violation of the law. If certificates are lost, which can and will occur, the board member may be exposed to personal liability. Furthermore, considering H.B. 1161, by having to read the governing documents, or complete a board leader course, board members will be implicitly required to understand all of the governing documents and/or remember the information taught in the board leader course. (The governing documents of community associations are complex legal instruments, many parts of which even seasoned lawyers and jurists find challenging to understand and interpret.) In the event of litigation, directors may be cross-examined on substantive issues. Association members may attempt to show that board members falsely certified that they read the governing documents or failed to attend the board leader course.

Fifth, I do not believe that CAI presents a board leadership development workshop more than once a year. The workshops are presented by volunteers. It would probably be impossible for CAI to present workshops at least 4 times a year (and probably more), which would be required because directors are elected throughout the entire year. This will make it impossible for all board members to be able to attend workshops within ninety days of being elected, which will deprive them of one of the options under H.B. 1161. Additionally, it is not likely that CAI or any other organization would be equipped to educate all the serving directors in Hawaii, since there are probably in excess of 10,000 directors serving at any given time.

Sixth, H.B. 1161 does not specify details on the requirements of “board leader courses,” and there are no procedures for issuing instructor certificates. Furthermore, although H.B. 1161 refers to a “similar nationally recognized organization,” CAI is the only nationally recognized organization serving the community association industry in Hawaii.

Seventh, given that there are no community resources to meet the board leader course requirement, if H.B. 1161 were adopted, it should include a requirement that the State of Hawaii fund the board leader course and that the course be presented monthly at no cost to associations or board members.

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

For all of the reasons stated herein, I urge the committee to permanently defer this bill.

Sincerely,

Nani-Jay K Lavin

HB-1161

Submitted on: 2/15/2023 4:12:48 AM

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

LATE

Submitted By	Organization	Testifier Position	Testify
Ruth Love	Individual	Oppose	Written Testimony Only

Comments:

These are volunteers. Wanting or mandating them to go to a course is a bit ridiculous. It's hard enough getting people interested in participating in the community between their jobs and their families.

Thank you

Mrs Ruth Love