

Testimony of the Real Estate Commission

**Before the
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, February 11, 2020
9:00 a.m.
State Capitol, Conference Room 229**

**On the following measure:
S.B. 2419, RELATING TO CONDOMINIUMS**

Chair Baker and Members of the Committee:

My name is Carole Richelieu, and I am the Senior Condominium Specialist for the Real Estate Commission (Commission). The Commission opposes this bill.

The purpose of this bill is to make violations of voting requirements for elections of a condominium association subject to the enforcement powers of the Commission.

The entire premise and structure of Hawaii Revised Statutes (HRS) chapter 514B for condominium communities is self-governance and self-enforcement. To this end, this statute has a myriad of alternative dispute resolution tools readily and economically available to owners to handle disputes or issues, including several types of mediation and arbitration.

Condominium owners are not licensed or regulated by the Commission or RICO. The Commission does not regulate the conduct of persons who voluntarily purchase condominium units and enter private contractual relationships with condominium associations to comply with the governing documents.

Should the State start regulating the conduct of condominium owners in one specific area (e.g., association meetings, voting, proxies), a new source of revenue must be created to fund operation and personnel costs.

Finally, HRS section 514B-123 was amended last year pursuant to Act 7, Session Laws of Hawaii 2019, to significantly expand proxy and ballot retention. The Commission has not received complaints that this new legislation is not effectual. Should an issue arise, participants have ready access to alternative dispute resolution.

Thank you for the opportunity to testify, and we respectfully ask the Committee to defer this bill indefinitely.

The Senate
Committee on Commerce, Consumer Protection, and Health
Tuesday, February 11, 2020
9:00 am
Conference Room 229

To: Chair Baker
Re: SB2419, relating to condominiums

Aloha Chair Baker, Vice-Chair Chang, and Members of the Committee,

I am Lourdes Scheibert. I serve my community as a volunteer director of Kokua Council, one of Hawaii's oldest advocacy groups. Kokua Council is concerned about policies and practices which can impact the well-being of seniors and our community.

“Voting is one of the most important rights reserved to the members of a community association. The action most voted on by members is the election of directors. Once the directors are elected they have tremendous latitude and power to operate the business of the association so the integrity of their election is especially important...All elections are important because the legal, political and financial stakes...can be high...A board will usually have authority over enforcement, discipline, rules-adoption, construction, repairs, loans, contracts and dispute resolution.” (“Community Association Voting: Evolving Trends in Membership Elections of Directors and the Authorization of Corporate Action,” David J. Graf, Moeller Graf, P.C. and Steven S. Weil, Berding & Weil LLP, 2014)

514B-123 (C) allows the Board of Directors the privilege to vote themselves in for many years squeezing out other owners. Every owner should have the opportunity to serve as a director. I have experienced the abuse of power allowing this option for proxy on the election ballot. I believe the option to share the proxy to each director is fair. No other kind of election has a proxy given to its government to reelect themselves.

Proxy option:

(C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or

Everything hinges on the integrity of the electoral process. Please support this bill as it seeks to protect that integrity.

Aloha,
Lourdes Scheibert

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

February 10, 2020

Honorable Rosalyn H. Baker
Honorable Stanley Chang
Committee on Commerce, Consumer Protection, and Health
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB2419/OPPOSITION

Dear Chair Baker, Vice Chair Chang and Committee Members:

The Community Associations Institute, Legislative Action Committee ("CAI LAC") hereby submits this testimony in opposition to SB2419.

CAI LAC believes that state governmental micromanagement is not a reasonable solution to perceived problems in a few condominium projects. Condominium association voting related disputes usually involve the issues on interpretation of certain relevant Bylaws provisions and application of statutory provisions. Our judicial branch, not the Real Estate Commission, should be the venue for resolution of such matters.

CAI LAC is concerned that the proposed amendment to HRS § 514B-65 will unavoidably lead to the unintended encouragement for dissenting owners who do not prevail in association voting to abuse this proposed investigation power and waste all taxpayers' money to second-guess legitimate association voting process, interrupt normal association operation, lead to more defense legal fees and costs to be incurred by association responding to such inquiries.

CAI LAC represents the condominium and community associations industry, and respectfully request the Committee to reject or defer SB2419. Thank you for the opportunity to testify.

Very truly yours,



Na Lan

SB-2419

Submitted on: 2/8/2020 10:58:48 AM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Testifying for Associa	Oppose	No

Comments:

There are no valid examples that a voting problem exists and this Bill will only result with unnecessary efforts and funds for unsubstantiated election problems. Roberts Rules of Order which is mandated by law already provides mechanisms for election disputes.

LATE

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I oppose S.B. 2419 for the following reasons:

I oppose Section 4 of the bill which amends HRS Section 514B-69 to make it a misdemeanor, punishable by a fine, not exceeding \$10,000, or imprisonment, not exceeding one year, for violations of HRS Section 514B-123. HRS Section 514B-69 is already bad enough as it is, but adding Section 514B-123 to the list of sections that boards members and others may be held criminally liable for if there is a violation, goes too far. HRS Section 514B-123 deals with meetings, voting, and proxies. Making it a crime, punishable by imprisonment for up to one year or a fine of up to \$10,000 for any violation of this section will expose directors and others to liability even though they are acting in good faith and in the honest belief that they are complying with the law.

For example, HRS Section 514B-123(d) deals with proxy voting. Proxies may be returned as late as 4:30 p.m. the second business day before a meeting. Sometimes signatures are not legible or the name of the person signing as an officer, member, or manager of a corporation or LLC may not match the name of the representative in the association's records. In these instances, there may not be sufficient time for the association to investigate because the proxy might have just been received at 4:30 p.m. the second business day before the meeting. This is especially true where the unit is owned by a mainland or foreign individual, corporation, or LLC. If the association accepts the proxy - because it has no reason to believe the signature is unauthorized and it does not want to disenfranchise the owner - and it turns out the signature was not valid, someone will argue that the association's directors or managing agent committed a crime. On the flip side, if the association rejects the proxy and it turns out that the signature was valid, someone will argue that a crime was committed under the wording of this bill. Either way, the association's directors, managing agent, or others will be exposed to criminal liability even though they acted in good faith and attempted to comply with the law. This is but one example of how Section 4 of SB 2419 could be unfairly applied. Condominium board members are volunteers and should not be exposed to criminal sanctions for acting in good faith and performing to the best of their abilities. Section 4 will discourage qualified persons from running for the board, which will be a disservice to all condominium associations in the state.

For the reasons stated herein, I oppose S.B. 2419.

Respectfully submitted,

Thomas Tabacco

SB-2419

Submitted on: 2/9/2020 7:03:15 AM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jade Mariano	Individual	Support	No

Comments:

SB-2419

Submitted on: 2/9/2020 12:25:30 PM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Stuart Donachie	Individual	Support	No

Comments:

SB-2419

Submitted on: 2/9/2020 11:30:29 AM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura	Individual	Support	No

Comments:

I support this measure. It is high time the real estate commission upheld condo owners' rights to fair association board elections, where equitable administration should begin. Too many rigged elections equal too many management transparency issues, chief among them, failure to plan and maintain adequate association reserves.

The Senate
Committee on Commerce, Consumer Protection, and Health
Tuesday, February 11, 2020
9:00 a.m.
Conference Room 229

To: Chair Baker
Re: SB2419, relating to condominiums

Aloha Chair Baker, Vice-Chair Chang, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups. Kokua Council is concerned about policies and practices which can impact the well-being of seniors and our community.

Kokua Council hosts an annual Policy and Legislative Priorities Community Meeting attended by representatives from over 50 organizations* to present their priorities. At the end of the 2019 annual meeting, a poll of participants indicated **strong support for the protection of condominium owners' rights including the right to fair and honest elections.**

I am also leader of Hui 'Oia'i'o, informally known as "COCO," a coalition of over 300 property owners--mostly seniors--from over 150 common-interest associations, and I write this testimony on behalf of this coalition.

Condo associations are significant in the lives of as many as 1 in 3 Hawaii residents. Thus, promoting the democratic character of such associations should be a principal goal of all legislators. The destiny of an association is vested on the rights of its people. The people, while exercising their franchise, constitute the real source of power as they make their choice and elect those in whom they have faith to introduce reforms and improvements. The election can also be a platform of self-correction. But these are only possible if elections are fair and honest.

The lack of enforcement of election laws exacerbate the existing problems of electoral fraud and ignore the reasons of that fraud. Electoral fraud may be perpetrated to hide other serious problems including malfeasance, misappropriation of assets, embezzlement, self-dealing, deferred maintenance, retaliatory and abusive practices against owners, etc.

"Voting is one of the most important rights reserved to the members of a community association. The action most voted on by members is the election of directors. Once the directors are elected they have tremendous latitude and power to operate the business of the association so the integrity of their election is especially important...All elections are important because the legal, political and financial stakes...can be high...A board will usually have authority over enforcement, discipline, rules-adoption, construction, repairs, loans, contracts and dispute resolution." ("Community Association Voting: Evolving Trends in Membership Elections of Directors and the Authorization of Corporate Action," David J. Graf, Moeller Graf, P.C. and Steven S. Weil, Berding & Weil LLP, 2014)

Despite determined efforts by groups with vested interests in porous electoral systems to downplay violations of election law, reports of electoral fraud and manipulation are widespread.

I personally participated in over ten election records reviews and provided guidance to at least another dozen colleagues in other associations regarding their election records reviews. Every one of those reviews revealed faults with the electoral process, fraud, and/or election manipulation. One of the reviews that I personally participated in resulted in 2017's Act 73, https://www.capitol.hawaii.gov/session2017/bills/GM1174_PDF, initiated by a Hui participant.

For these reasons, **Hui `Oia`i`o supports SB2251 HD1** but asks for the following additional amendment:

514B-123 (j) No managing agent or resident manager, or their employees, or the association's employees, shall solicit, ~~for use by the managing agent or resident manager~~, any proxies from any unit owner of the association that retains the managing agent or employs the resident manager except for the purpose of establishing a quorum, nor shall the managing agent or resident manager cast any proxy vote at any association meeting except for the purpose of establishing a quorum.

Jose Ortega y Gasset said, "The health of democracies, of whatever type and range, depends on a wretched technical detail: electoral procedure. All the rest is secondary." (Jose Ortega y Gasset: The Revolt of the Masses, 1932)

Everything hinges on the integrity of the electoral process. Hui Oia`i`o supports this bill as it seeks to protect that integrity.

Aloha,

Lila Mower

*The organizations include AARP - Advocacy Director, Altres Home Care, Alzheimer's Association, Arcadia Family Of Companies, Caring Across Generations, Catholic Charities, Child And Family Services, Common Cause Hawaii, Community Alliance On Prisons (CAP), Condo 411, Drug Policy Forum, Elderly Affairs Division, City and County Of Honolulu (EAD), Executive Office On Aging (State Of Hawaii), Faith Action (fka Faith Action For Community Equity), Foster Grandparent Program, Grassroot Institute Of Hawaii, Hawaii Disability & Communication (DCAB), Hawaii Alliance Of Non-Profits (HANO), Hawaii Appleseed Center For Law And Economic Justice, Hawaii Alliance Of Retired Americans (HARA), Hawaii Community Foundation, Hawaii Family Caregiver's Coalition (HFCC), Hawaii Disability Rights Center, Hawaii Long Term Care Ombudsman, Hawaii Meals On Wheels, Helping Hands Hawaii, Hui `Oia`i`o, Institute For Human Services (IHS), KAHEA, Kokua Kalihi Valley, Kupuna Caucus, Kupuna Education Center at KCC, Lanakila Meals On Wheels, League Of Women Voters, Manoa Cottage Care Home, Mediation Center Of The Pacific, National Alliance On Mental Illness (NAMI), Native Hawaiian Legal Group, Osher Lifelong Learning Institute, Pacific Alliance To Stop Slavery (PASS), Partners In Care, Phocused, Policy Advisory Board For Elderly Affairs (PABEA), Pono Action, Project Dana, Public Health Nursing, Sierra Club, Senior Companion Program, Times Pharmacy, UH Center On Aging, and the State of Hawaii Governor's Coordinator on Homelessness.

SB-2419

Submitted on: 2/10/2020 8:30:09 AM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dawn Smith	Individual	Support	Yes

Comments:

This is an imperative addition to the condo election regs. Hawaii has specific requirements for AOA Board elections but absolutely no remediation or repercussions for misuse of the system. There is simply no way currently to enforce (AOAO) election corruption here and therefore no incentive to follow the current laws.

I am writing this testimony based on several years of witnessing fraud and skullduggery by Boards and Management as they successfully maneuvered elections. I thank all in the legislature who agreed to attend to this seemingly minor situation which HUGEly affects the 30% population of us condo-ites condo-surviving in Hawaii! Mahalo nui loa!!!!

SB-2419

Submitted on: 2/10/2020 9:20:06 AM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I oppose S.B. 2419 for the following reasons:

I oppose Section 4 of the bill which amends HRS Section 514B-69 to make it a misdemeanor, punishable by a fine, not exceeding \$10,000, or imprisonment, not exceeding one year, for violations of HRS Section 514B-123. HRS Section 514B-69 is already bad enough as it is, but adding Section 514B-123 to the list of sections that boards members and others may be held criminally liable for if there is a violation, goes too far. HRS Section 514B-123 deals with meetings, voting, and proxies. Making it a crime, punishable by imprisonment for up to one year or a fine of up to \$10,000 for any violation of this section will expose directors and others to liability even though they are acting in good faith and in the honest belief that they are complying with the law.

For example, HRS Section 514B-123(d) deals with proxy voting. Proxies may be returned as late as 4:30 p.m. the second business day before a meeting. Sometimes signatures are not legible or the name of the person signing as an officer, member, or manager of a corporation or LLC may not match the name of the representative in the association's records. In these instances, there may not be sufficient time for the association to investigate because the proxy might have just been received at 4:30 p.m. the second business day before the meeting. This is especially true where the unit is owned by a mainland or foreign individual, corporation, or LLC. If the association accepts the proxy - because it has no reason to believe the signature is unauthorized and it does not want to disenfranchise the owner - and it turns out the signature was not valid, someone will argue that the association's directors or managing agent committed a crime. On the flip side, if the association rejects the proxy and it turns out that the signature was valid, someone will argue that a crime was committed under the wording of this bill. Either way, the association's directors, managing agent, or others will be exposed to criminal liability even though they acted in good faith and attempted to comply with the law. This is but one example of how Section 4 of SB 2419 could be unfairly applied. Condominium board members are volunteers and should not be exposed to criminal sanctions for acting in good faith and performing to the best of their abilities. Section 4 will discourage qualified persons from running for the board, which will be a disservice to all condominium associations in the state.

For the reasons stated herein, I oppose S.B. 2419.

Respectfully submitted,

M. Anne Anderson

SB-2419

Submitted on: 2/10/2020 9:42:04 AM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mark McKellar	Testifying for Law Offices of Mark K. McKellar, LLLC	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I oppose S.B. 2419 for the following reasons:

I oppose Section 4 of the bill which amends HRS Section 514B-69 to make it a misdemeanor, punishable by a fine, not exceeding \$10,000, or imprisonment, not exceeding one year, for violations of HRS Section 514B-123. HRS Section 514B-69 is already bad enough as it is, but adding Section 514B-123 to the list of sections that boards members and others may be held criminally liable for if there is a violation, goes too far. HRS Section 514B-123 deals with meetings, voting, and proxies. Making it a crime, punishable by imprisonment for up to one year or a fine of up to \$10,000 for any violation of this section will expose directors and others to liability even though they are acting in good faith and in the honest belief that they are complying with the law.

1. example, HRS Section 514B-123(d) deals with proxy voting. Proxies may be returned as late as 4:30 p.m. the second business day before a meeting. Sometimes signatures are not legible or the name of the person signing as an officer, member, or manager of a corporation or LLC may not match the name of the representative in the association's records. In these instances, there may not be sufficient time for the association to investigate because the proxy might have just been received at 4:30 p.m. the second business day before the meeting. This is especially true where the unit is owned by a mainland or foreign individual, corporation, or LLC. If the association accepts the proxy - because it has no reason to believe the signature is unauthorized and it does not want to disenfranchise the owner - and it turns out the signature was not valid, someone will argue that the association's directors or managing agent committed a crime.

On the flip side, if the association rejects the proxy and it turns out that the signature was valid, someone will argue that a crime was committed under the wording of this bill. Either way, the association's directors, managing agent, or others will be exposed to criminal liability even though they acted in good faith and attempted to comply with the law. This is but one example of how Section 4 of SB 2419 could be unfairly applied. Condominium board members are volunteers and should not be exposed to criminal sanctions for acting in good faith and performing to the best of their abilities. Section 4 will discourage qualified persons from running for the board, which will be a disservice to all condominium associations in the state.

For the reasons stated herein, I oppose S.B. 2419.

Respectfully submitted,

Mark McKellar

SB-2419

Submitted on: 2/10/2020 9:49:28 AM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Oppose	No

Comments:

I am a condo owner and board member.

I oppose Section 4 of SB2419 which amends HRS Section 514B-69 to make it a misdemeanor, punishable by a fine, not exceeding \$10,000, or imprisonment, not exceeding one year, for violations of HRS Section 514B-123. Adding Section 514B-123 to the list of sections that boards members and others may be held criminally liable for if there is a violation, goes too far. HRS Section 514B-123 deals with meetings, voting, and proxies. Making it a crime, punishable by imprisonment for up to one year or a fine of up to \$10,000 for any violation of this section will expose directors and others to liability even though they are acting in good faith and in the honest belief that they are complying with the law.

For example, HRS Section 514B-123(d) deals with proxy voting. Proxies may be returned as late as 4:30 p.m. the second business day before a meeting. Sometimes signatures are not legible or the name of the person signing as an officer, member, or manager of a corporation or LLC may not match the name of the representative in the association's records. In these instances, there may not be sufficient time for the association to investigate because the proxy might have just been received at 4:30 p.m. the second business day before the meeting. This is especially true where the unit is owned by a mainland or foreign individual, corporation, or LLC. If the association accepts the proxy - because it has no reason to believe the signature is unauthorized and it does not want to disenfranchise the owner - and it turns out the signature was not valid, someone will argue that the association's directors or managing agent committed a crime. On the flip side, if the association rejects the proxy and it turns out that the signature was valid, someone will argue that a crime was committed under the wording of this bill. Either way, the association's directors, managing agent, or others will be exposed to criminal liability even though they acted in good faith and attempted to comply with the law. This is but one example of how Section 4 of SB 2419 could be unfairly applied.

Condominium board members are volunteers and should not be exposed to criminal sanctions for acting in good faith and performing to the best of their abilities. Section 4

will discourage qualified persons from running. As it is, my 396 unit condo at times cannot find nine people willing to serve on the board.

Lynne Matusow

SB-2419

Submitted on: 2/10/2020 10:00:07 AM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
mary freeman	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I oppose S.B. 2419 for the following reasons:

I oppose Section 4 of the bill which amends HRS Section 514B-69 to make it a misdemeanor, punishable by a fine, not exceeding \$10,000, or imprisonment, not exceeding one year, for violations of HRS Section 514B-123. HRS Section 514B-69 is already bad enough as it is, but adding Section 514B-123 to the list of sections that boards members and others may be held criminally liable for if there is a violation, goes too far. HRS Section 514B-123 deals with meetings, voting, and proxies. Making it a crime, punishable by imprisonment for up to one year or a fine of up to \$10,000 for any violation of this section will expose directors and others to liability even though they are acting in good faith and in the honest belief that they are complying with the law. It will make the already difficult job of finding home owners willing to serve on the boards even harder. These are unpaid positions, those who serve receive no benefits. This bill will not help home owners, nor the communities they live in.

1. example, HRS Section 514B-123(d) deals with proxy voting. Proxies may be returned as late as 4:30 p.m. the second business day before a meeting. Sometimes signatures are not legible or the name of the person signing as an officer, member, or manager of a corporation or LLC may not match the name of the representative in the association's records. In these instances, there may not be sufficient time for the association to investigate because the proxy might have just been received at 4:30 p.m. the second business day before the meeting. This is especially true where the unit is owned by a mainland or foreign individual, corporation, or LLC. If the association accepts the proxy - because it has no reason to believe the signature is unauthorized and it does not want to disenfranchise the owner - and it turns out the signature was not valid, someone

will argue that the association's directors or managing agent committed a crime. On the flip side, if the association rejects the proxy and it turns out that the signature was valid, someone will argue that a crime was committed under the wording of this bill. Either way, the association's directors, managing agent, or others will be exposed to criminal liability even though they acted in good faith and attempted to comply with the law. This is but one example of how Section 4 of SB 2419 could be unfairly applied. As stated above, condominium board members are volunteers and should not be exposed to criminal sanctions for acting in good faith and performing to the best of their abilities. Section 4 will further discourage qualified persons from running for the board, which will be a disservice to all condominium associations in the state.

For the reasons stated herein, I oppose S.B. 2419.

Respectfully submitted,

Mary S. Freeman

SB-2419

Submitted on: 2/10/2020 10:36:09 AM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Bradford Lee Hair	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I oppose S.B. 2419 for the following reasons:

I oppose Section 4 of the bill which amends HRS Section 514B-69 to make it a misdemeanor, punishable by a fine, not exceeding \$10,000, or imprisonment, not exceeding one year, for violations of HRS Section 514B-123. HRS Section 514B-69 is already bad enough as it is, but adding Section 514B-123 to the list of sections that boards members and others may be held criminally liable for if there is a violation, goes too far. HRS Section 514B-123 deals with meetings, voting, and proxies. Making it a crime, punishable by imprisonment for up to one year or a fine of up to \$10,000 for any violation of this section will expose directors and others to liability even though they are acting in good faith and in the honest belief that they are complying with the law.

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For the reasons stated herein, I oppose S.B. 2419.

Respectfully submitted,

Bradford Lee Hair

SB-2419

Submitted on: 2/10/2020 10:53:29 AM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip Nerney	Individual	Oppose	Yes

Comments:

Micromanagement of condominium elections by the executive branch is unnecessary. Existing remedies for genuine disputes already exist.

SB-2419

Submitted on: 2/10/2020 11:20:24 AM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. Ireland Koftinow	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I oppose S.B. 2419 for the following reasons:

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abilities. Section 4 will discourage qualified persons from running for the board, which will be a disservice to all condominium associations in the state.

For the reasons stated herein, I oppose S.B. 2419.

Respectfully submitted,

Paul A. Ireland Koftinow

From: [Dot Mason](#)
To: [CPH Testimony](#)
Subject: S.B. 2419
Date: Monday, February 10, 2020 11:59:42 AM

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I oppose S.B. 2419 for the following reasons:

I oppose Section 4 of the bill which amends HRS Section 514B-69 to make it a misdemeanor, punishable by a fine, not exceeding \$10,000, or imprisonment, not exceeding one year, for violations of HRS Section 514B-123. HRS Section 514B-69 is already bad enough as it is, but adding Section 514B-123 to the list of sections that boards members and others may be held criminally liable for if there is a violation, goes too far. HRS Section 514B-123 deals with meetings, voting, and proxies. Making it a crime, punishable by imprisonment for up to one year or a fine of up to \$10,000 for any violation of this section will expose directors and others to liability even though they are acting in good faith and in the honest belief that they are complying with the law.

For example, HRS Section 514B-123(d) deals with proxy voting. Proxies may be returned as late as 4:30 p.m. the second business day before a meeting. Sometimes signatures are not legible or the name of the person signing as an officer, member, or manager of a corporation or LLC may not match the name of the representative in the association's records. In these instances, there may not be sufficient time for the association to investigate because the proxy might have just been received at 4:30 p.m. the second business day before the meeting. This is especially true where the unit is owned by a mainland or foreign individual, corporation, or LLC. If the association accepts the proxy - because it has no reason to believe the signature is unauthorized and it does not want to disenfranchise the owner - and it turns out the signature was not valid, someone will argue that the association's directors or managing agent committed a crime. On the flip side, if the association rejects the proxy and it turns out that the signature was valid, someone will argue that a crime was committed under the wording of this bill. Either way, the association's directors, managing agent, or others will be exposed to criminal liability even though they acted in good faith and attempted to comply with the law. This is but one example of how Section 4 of SB 2419 could be unfairly applied. Condominium board members are volunteers and should not be exposed to criminal sanctions for acting in good faith and performing to the best of their abilities. Section 4 will discourage qualified persons from running for the board, which will be a disservice to all condominium associations in the state.

For the reasons stated herein, I oppose S.B. 2419.

Respectfully submitted,

Dorothy Mason, President
Association of Apartment Owners
999 Wilder Ave.
Honolulu HI 96822

SB-2419

Submitted on: 2/10/2020 2:04:12 PM

Testimony for CPH on 2/11/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Bob Toguchi	Individual	Oppose	No

Comments:

Dear Senator Baker, Chair, Senator Chang, Vice Chair, and Members of the Committee:

I oppose S.B. 2419 for the following reasons:

I oppose Section 4 of the bill which amends HRS Section 514B-69 to make it a misdemeanor, punishable by a fine, not exceeding \$10,000, or imprisonment, not exceeding one year, for violations of HRS Section 514B-123. HRS Section 514B-69 is already bad enough as it is, but adding Section 514B-123 to the list of sections that boards members and others may be held criminally liable for if there is a violation, goes too far. HRS Section 514B-123 deals with meetings, voting, and proxies. Making it a crime, punishable by imprisonment for up to one year or a fine of up to \$10,000 for any violation of this section will expose directors and others to liability even though they are acting in good faith and in the honest belief that they are complying with the law.

1. example, HRS Section 514B-123(d) deals with proxy voting. Proxies may be returned as late as 4:30 p.m. the second business day before a meeting. Sometimes signatures are not legible or the name of the person signing as an officer, member, or manager of a corporation or LLC may not match the name of the representative in the association's records. In these instances, there may not be sufficient time for the association to investigate because the proxy might have just been received at 4:30 p.m. the second business day before the meeting. This is especially true where the unit is owned by a mainland or foreign individual, corporation, or LLC. If the association accepts the proxy - because it has no reason to believe the signature is unauthorized and it does not want to disenfranchise the owner - and it turns out the signature was not valid, someone will argue that the association's directors or managing agent committed a crime. On the flip side, if the association rejects the proxy and it turns out that the signature was valid, someone will argue that a crime was committed under the wording of this bill. Either way, the association's directors, managing agent, or others will be exposed to criminal liability even though they acted in good faith and attempted to comply with the law. This is but one example of how Section 4 of SB 2419 could be unfairly applied. Condominium board members are volunteers and should not be exposed to criminal sanctions for acting in good faith and performing to the best of their abilities. Section 4 will discourage

qualified persons from running for the board, which will be a disservice to all condominium associations in the state.

For the reasons stated herein, I oppose S.B. 2419.

Respectfully submitted,

Bob Toguchi

LATE

From: [Dante Carpenter](#)
To: [CPH Testimony](#)
Cc: carpenterd@hawaiiantel.net; [M. Anne Anderson](#)
Subject: SB 2419 Testimony for CPH
Date: Monday, February 10, 2020 6:17:21 PM

Chair Sen. Baker, Vice-Chair Sen. Chang, and Committee Members:

My name is Dante Carpenter, a Director of AOA Country Club Village, Phase 2, with 469 Units in Salt Lake area. I am opposed to SB 2419; Relating to Condominiums.

1. Section 4 of the Bill adds additional penalties for violations of HRS Sec. 514B-123. Adding Sec. 514B-123 to the list of sections that board members and others may

be held criminally liable for if there is a violation really goes too far! HRS Sec. 514B-123 deals with meetings, voting, and proxies. By making it a crime with the punishment including imprisonment for up to one year or fine up to \$10,000 for any violation of this section will expose directors and others to liability even though they are acting in good faith and honestly believe they are in compliance with the law. (FYI, Our Owners Annual Meeting date is scheduled for February 27, 2020 at 6 p.m.)

2. For example, HRS Sec. 514B-123(d) deals with proxy voting. Proxies may be returned as late as 4:30 p.m. the second business day before the meeting. Sometimes signatures are not legible or the name of the person signing as an officer, member, or manager of a corporation or LLC may not match the name of the representative in the Association's records. In these instances there may not be sufficient time for the association to investigate because the proxy might have just been received at 4:30 p.m. on the second day before the meeting (deadline met). This is especially true when the unit is owned by a mainland or foreign individual, corporation or LLC. If the association accepts the proxy because it has no reason to believe the signature is unauthorized – and it turns out that the signature was not valid, someone will argue that the association's director or managing agent committed a crime. On the other hand, if the association rejects the proxy and it turns out that the signature was valid, someone will argue that a crime was committed under the wording of this bill. In either case, the association's directors, managing agent, or others will be exposed to criminal liability even though they acted in good faith and attempted to comply with the law!

3. This is one example of how Section 4 of SB 2419 could be unfairly applied. Please know that Condominium Board Members are volunteers and should not be exposed to criminal sanctions for acting in good faith and performing to the best of their abilities. Finally, Section 4 will discourage qualified persons from running for the board and that will be a disservice to all the numerous condominium associations in the state.

Respectfully submitted,

Dante Carpenter

Director, AOA CCV, Phase 2 (469 Units)