

SB-784

Submitted on: 1/31/2021 5:09:42 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

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

Comments:

I support the intent of the Bill although voting was not specifically addressed. Voting is required to be by secret ballot. Some voting is complex with many percentages of common interest or cumulative voting. The Bill should include appropriate language to permit voting provided that the secret ballot requirement is maintained. It should be noted that no software or app exists today to satisfy the above, but I bet its coming soon.

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 1, 2021

Honorable Rosalyn Baker, Chair
Honorable Stanley Chang, Vice Chair
Committee on Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 784 SUPPORT WITH AMENDMENTS

Dear Chair Baker, Vice Chair Chang and Committee Members:

The need for common interest communities to have flexibility regarding meetings is evident in light of the current pandemic. The Community Associations Institute ("CAI") supports SB 784 with amendments.

SB 784 provides for "video conferencing" in the event of "a pandemic or other similar unforeseen circumstance[.]" Two main concerns relate to that verbiage.

First, since meetings are presently to be conducted in accordance with Robert's Rules of Order, Newly Revised (12th Ed.) ("RRONR"), reference should be made to "electronic meetings" and to "electronic or machine voting." *See, e.g.,* RRONR 9:30 *et seq.* and 45:42-43. The phrase "video conferencing" should not be used.

Second, the phrase "pandemic or other similar unforeseen circumstance" is vague, ambiguous and subject to abuse. The circumstances in which the special meeting authority is applicable should be clear. Reference should be made to when "a state of emergency, declared pursuant to chapter 127A, is in effect in the county in which the association is located."

Moreover, the emergency authority should not be restricted to "annual meetings" as stated in sections 1 and 3 of SB 784. The authority should extend to annual and special meetings.

Honorable Rosalyn Baker, Chair
Honorable Stanley Chang, Vice Chair
February 1, 2021
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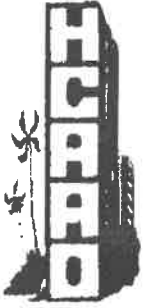
It is also true that emergency authority should extend to condominium *board* meetings. Hawaii Revised Statutes §514B-125(d) *generally* enables boards to meet by a broad range of means "Unless otherwise provided in the declaration or bylaws," in which case special authority is needed. Legislation should provide special authority for boards to meet remotely, *regardless* of what the declaration or bylaws provide.

Amendments based on SB 236 should be considered.

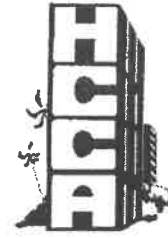
Very truly yours,

Philip Nerney

Philip Nerney



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



February 1, 2021

Senator Roslyn Baker, Chair
Senator Stanley Chang, Vice-Chair
Senate Committee on Commerce and Consumer Affairs

Re: Testimony in support of
SB 784 RELATING TO ASSOCIATION GOVERNANCE
Hearing: Wednesday, February 3, 2021, 9 a.m., Conf. Rm. #229

Chair Baker and Vice-Chair Chang and Members of the Committee:

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

HCCA supports this bill because the pandemic has prevented many if not most of the condominium associations whose annual meetings were scheduled after March 16, 2020 (i.e., the date of the Governor's first Emergency Proclamation) from having their annual meetings due to the prohibition on socially gathering in large numbers.

We suggest the following amendment to HRS §514B-121(e):

“(e)All association meetings shall be conducted in accordance with the most recent edition of Robert’s Rules of Order Newly Revised. Meetings may be conducted by any means that allow participation by all unit owners in any deliberation or discussion. Electronic meetings and electronic or mail voting shall be authorized during any period in which a state of emergency, declared pursuant to chapter 127A, is in effect in the county in which the association is located regardless of what the declaration or bylaws provide.” We also request a sunset date of June 30, 2024 to allow changes to be made to the statute based on implementation of the law and development of new technologies.

Amendments to chapters HRS 421I and 421J are not required because HRS 414D 101(g) allows most if not all of those associations to already conduct their annual meetings remotely. Accordingly, HCCA respectfully requests that you pass out this bill with the suggested revisions. Thank you for the opportunity to testify on this matter.

A handwritten signature in cursive script that reads "Jane Sugimura".
Jane Sugimura, President



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

February 1, 2021

Honorable Senator Rosalyn H. Baker, Chair
Honorable Senator Stanley Chang, Vice-Chair
Senate Committee on Commerce and Consumer Protection (CPN)
Hawaii State Capitol, Room 230
415 South Beretania Street
Honolulu, HI 96813

**RE: Testimony in SUPPORT OF SB784 WITH AMENDMENTS; Hearing Date:
February 3, 2021 at 9:30 p.m. in House conference room 229/videoconference;
sent via Internet**

Aloha Chair Baker, Vice-Chair Chang, and Committee members,

Thank you for the opportunity to provide testimony on this bill. Unfortunately, I had a prior teaching obligation this morning so may not be unable to appear via videoconference.

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 1,800 meetings in 38 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 SUPPORT OF SB784 WITH AMENDMENTS.

Summary of Bill:

This Bill briefly proposes to do the following:

- (a) insert a new section into the HRS Chapter on Cooperative Housing Corporations to provide notice requirements similar to condominium associations, including authority to conduct annual meetings remotely by video conference (Section 1);
- (b) change HRS §421I-5 relating to cooperatives to ensure that shareholders have rights to participate in any deliberation or discussion (Section 2); and
- (c) change HRS §421J-3.5 relating to Planned Community Associations to provide for

- video conferencing under certain circumstances (Section 3); and
(d) change HRS §514D-121 relating to Condominiums to provide for video conferencing under certain circumstances (Section 4).

We have included an additional proposal, labeled “(e)” below.

(a) insert a new section into the HRS Chapter on Cooperative Housing Corporations to provide notice requirements similar to condominium associations, including authority to conduct annual meetings remotely by video conference (Section 1);

HRS §421I-11 provides that the Hawaii Business Corporations Act, Chapter 414 applies to Cooperative Housing Corporations.

HRS §414-121 already provides a method for remote communications for annual meetings. HRS §414-122(c) already provides a method for remote communications for special meetings by referring to HRS §414-121 for guidance.

Our Position: This amendment is not needed.

(b) change HRS §421I-5 relating to cooperatives to ensure that shareholders have rights to participate in any deliberation or discussion (Section 2);

This change permits more shareholder participation. It balances shareholder participation with the necessity for reasonable restrictions.

Our Position: We support this amendment.

(c) change HRS §421J-3.5 relating to Planned Community Associations to provide for video conferencing under certain circumstances (Section 3);

In my experience, many Planned Community Associations are also incorporated in accordance with Chapter 414D.

HRS §414D-101(d) and §414D-102(f) already provides a method for annual and special meetings respectively to be conducted by Internet, teleconference, or other electronic transmission technology.

Our Position: This amendment is not needed for incorporated Planned Community Associations. However, we recommend using the proposed amendment identified below in item (d) as an alternative that is flexible and protective of the process.

(d) change HRS §514B-121 relating to Condominiums to provide for video conferencing under certain circumstances (Section 4).

This section proposed to amend the section to read as follows: “A meeting of the

association shall be held at least once each year; provided that in the event of a pandemic or other similar unforeseen circumstance that prevents unit owners from physically gathering for a meeting, the association may hold a meeting remotely by video conferencing whereby the board and any unit owner who wishes to participate in that meeting can communicate with each other."

Association and Board meetings are required to be conducted in accordance with the latest edition of Robert's Rules of Order Newly Revised (12th ed.), ("*Roberts Rules*") recently updated and released September 1, 2020.

Roberts Rules §9:33 uses the term "electronic meetings" so there is flexibility with respect to audio conference, video conference, or both.

We suggest an amendment to use "electronic meetings" since it is a defined term. "Video conference" could be technically limiting for attendees, have unintended consequences, and should not be used.

We are concerned that the use of "other similar unforeseen circumstance" may be subject to abuse.

If the legislature only wants to provide this option during an emergency, we suggest that the wording be amended to more appropriately define a situation where an official declaration is made by appropriate governmental authorities.

Our position: We support the proposed change if it is amended as previously suggested.

(e) change HRS §514B-125 relating to Condominiums to clarify remote communications for Board meetings.

The current statute provides for communications. HRS §514B-125(d) states in part, "Unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. [...]"

Robert's Rules requires that board meetings be in person unless permitted by the governing documents.

Our position: We suggest an amendment to HRS §514B-125(d) to strike the words, "Unless otherwise provided in the declaration or bylaws" in order to ensure that boards have clear statutory authority to conduct online meetings."

We ask that the Committee approve this Bill with the suggested amendments.

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

Sincerely,

Steve Glanstein

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

SB-784

Submitted on: 2/2/2021 8:17:37 AM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Atlanta Dove	Testifying for Honolulu Tower AOAO	Support	No

Comments:

Honolulu Tower is a 40 story, 396 unit condominium at the corner of Maunakea and Beretania Streets. It was constructed in 1982.

The Board of Directors met on February 1, 2021 and voted its unanimous support for this bill. We need a way to meet. When most bylaws were written the internet, videoconferencing, zoom, webex, etc., did not exist. This bill will solve the problem we are all facing.

Thank you for your consideration of this matter.

Board of Directors AOAO

SB-784

Submitted on: 2/2/2021 8:22:10 AM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Resident Manager	Testifying for Honolulu Tower AOAO	Support	No

Comments:

Honolulu Tower is a 40 story, 396 unit condominium at the corner of Maunakea and Beretania Streets. It was constructed in 1982.

The Board of Directors met on February 1, 2021 and voted its unanimous support for this bill. We need a way to meet. When most bylaws were written the internet, videoconferencing, zoom, webex, etc., did not exist. This bill will solve the problem we are all facing.

Thank you for your consideration of this matter.

Board of Directors AOAO

Senator Baker and Members of The Committee,

My name is John Morris, and I am testifying in favor of SB784 with suggested changes.

Section 1 of the bill should probably reference section 414-121(c) of the for-profit corporations law. That law applies to cooperative housing corporations, in addition to chapter 421I, and that section already authorises for-profit corporations to conduct remote or virtual meetings with appropriate procedures. Therefore, it would probably be good if Section 1 of this bill referenced that section as well, for guidance on how to conduct virtual meetings.

Similarly, section 3 of the bill should probably also reference section 414D-101(g). Chapter 414D applies to the non-condominium homeowner associations that are also governed by chapter 421J. Moreover, section 414D-101(g) includes specific language outlining how remote or virtual meetings should be conducted. Therefore, section 3 of the bills should reference that section to provide additional guidance to non-condominium homeowner associations

finally, Section 4 of the bill should probably be revised to also eliminate the language in section 514B -121(e), which reads as follows:

(e) All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. ~~If so provided in the declaration or bylaws,~~ As provided in section 514B-121(a), meetings may be conducted by any means that allow participation by all unit owners in any deliberation or discussion.

While adding the new language into section 514B-121(a) is not necessarily a bad thing, it does contradict the other section. To avoid that contradiction, it would be worthwhile amending section 514B-121(e) as well, to make the two subsections consistent.

As a final point, the legislature could consider allowing co-ops, non-condominium homeowner associations, and condominium associations the right to conduct remote or virtual meetings regardless of whether there is a pandemic. It seems that remote or virtual meetings are here to stay, and they allow many people who cannot actually attend the meeting to attend remotely and see what's going on. There seems to be no reason why, with appropriate procedures, that right should not exist even if there is no pandemic.

Thank you for this opportunity to testify.

John Morris

Richard S. Ekimoto
2236 Apoepoe Street
Pearl City, Hawaii 96782

February 1, 2021

Senator Rosalyn H. Baker, Chair
Senate Commerce and Consumer Protection Committee
Hawaii State Capitol
Room 230
Honolulu, HI 96813

Dear Senator Baker and Members of The Committee,

My name is Richard Ekimoto, and I am testifying in favor of SB784 with proposed changes.

Sections 1 and 2 of the bill proposes changes to the residential cooperative statute which I believe are unnecessary. There are no new residential cooperatives being created. Ever since Hawaii adopted statutes allowing condominiums, the only residential cooperatives that have been created in Hawaii were in unusual circumstances. For instance, most were created shortly after the condominium statute was adopted probably because the coop documents had already been drafted. The only other residential cooperative created in the last 20 years was when a developer wished to create a cooperative because the condominium form of housing was not available for unusual reasons.

Not only are new residential cooperatives not being created, but the number has also steadily decreased. Since Hawaii's adoption of a condominium statute, the number of residential cooperatives has gone down as they've either converted to condominiums or their long-term leases have expired and the corporations dissolved. Currently, there are only about a dozen residential cooperatives in Hawaii governed by Hawaii Revised Statutes Chapter 421I. Moreover, the requirements for notice and processes for handling meetings for residential cooperatives are already governed by their bylaws and the provisions of Hawaii Revised Statutes Chapter 414. Specifically, residential cooperatives are permitted to hold electronic shareholder meetings pursuant to Hawaii Resided Statutes Section 414-121(c). Finally, since residential cooperatives are not associations, the proposed amendment to Hawaii Revised Statutes Chapter 421I is beyond the scope of the title of the bill. For these reasons, the proposed amendments to Hawaii Revised Statutes Chapter 421I are simply unnecessary.

Similarly, Section 3 of the bill proposes an amendment to the law governing planned community associations. Specifically, it proposes to provide that membership meetings in a planned community association may be held by video conference in a pandemic. However, this change is unnecessary and furthermore unreasonably limits planned community associations from having electronic

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Senate Commerce & Consumer Protection Committee

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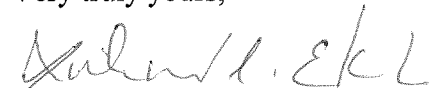
meetings. Every planned community association I am aware of is incorporated as a nonprofit corporation. Hawaii Revised Statutes Section 414D-101(g) already authorizes nonprofit corporations to hold membership meetings virtually even if there is no pandemic. Moreover, the provisions of Hawaii Revised Statutes Section 414D-101(g) provide greater details on holding membership meetings virtually. For these reasons, the proposed amendment to Hawaii Revised Statutes Chapter 421J are unnecessary.

Section 4 of the bill addresses an important change to the condominium statute to allow condominiums in Hawaii to hold their membership meetings virtually, I prefer the language in SB253 for the following reasons:

1. The change to Hawaii Revised Statutes Section 514B-121(a) are unnecessary. If a condominium association wishes to hold a virtual meeting even without a pandemic, the association should be permitted to do so. If an association believes that more owners will participate in virtual membership meetings, they should be allowed to hold them virtually. Furthermore, the provisions about how the meeting should be held virtually should be addressed in Hawaii Revised Statutes Section 514B-121(e) since that subsection already addresses virtual membership meetings. The language in SB253 not only does this but also references the nonprofit corporation statute requirements for holding virtual meetings. Since the nonprofit corporation statute is based on the Model ABA nonprofit corporation statute, there is ample case law and ABA commentary about the process. Furthermore, the language in Section 514B-121(e) requiring an amendment to hold a virtual meeting should be deleted to avoid confusion.
2. The language currently in Hawaii Revised Statutes Section 514B-121(b) creates a significant impediment to holding a meeting virtually. It requires, among other things, that an electronic voting device not be connected to an external network, including the internet. That makes it extremely difficult to conduct voting at a virtual membership meeting. Furthermore, the reason for the addition of Section 514B-121(b) was because the version of Robert's Rules of Order Newly Revised then in effect did not permit electronic voting. Since then, the new version of Robert's permits electronic voting, so subsection (b) is unnecessary.

Thank you for this opportunity to testify. If you should have any questions, please do not hesitate to contact me at 523-0702.

Very truly yours,



RICHARD S. EKIMOTO

SB-784

Submitted on: 2/1/2021 3:47:46 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

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

Comments:

I serve on the board of a honolulu high rise condominium. Fortunately, we were able to hold our 2020 annual meeting because it was scheduled before the lockdown. When many of the condo laws were written zoom, webex, internet connections, etc. did not exist. Many condos have been disadvantaged with the covid restrictions,. This bill will enable us to conduct business in pandmeics and other emergency situations and needs to be approved as soon as possible. Please support this bill.

SB-784

Submitted on: 2/1/2021 7:18:25 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
R Laree McGuire	Individual	Support	No

Comments:

I support with amendments and join in the written testimony submitted by Steve Glanstein on 2/1/21 on behalf of the Hawaii State Association of Parliamentarians.

LATE

SB-784

Submitted on: 2/2/2021 12:53:20 PM

Testimony for CPN on 2/3/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Govier	Individual	Comments	No

Comments:

To the Chairman and Members,

Please use the term, that is words, "electronic meeting" instead of term video conferencing and the like.

Electronic meeting covers any means of communication technology by which all persons participating in the meeting can speak to and hear each other at the same time. This covers both teleconference and video conference and combinations of same.

It protects the rights of those who have access to communication that is other than video/computer. For example, a person may participate in a "zoom" meeting using their i-phone rather than full visual on a computer. It also covers future technology.

Thank you for your consideration,

Mrs.S.Govier, Aiea, HI