

SB 2223

JAN 21 2010

A BILL FOR AN ACT

RELATING TO CONDOMINIUM BOARDS OF DIRECTORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 514A-82, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The bylaws shall provide for at least the following:

4 (1) Board of directors:

5 (A) The election of a board of directors;

6 (B) The number of persons constituting the board;
7 provided that condominiums with more than one
8 hundred individual apartment units shall have an
9 elected board of not less than nine members
10 unless not less than sixty-five per cent of all
11 apartment owners vote by mail ballot, or at a
12 special or annual meeting, to reduce the minimum
13 number of directors;

14 (C) That for the initial term of office, directors
15 shall serve for a term of [~~three~~] two years or
16 the term as specified by the bylaws or until
17 their successors have been elected or appointed;



1 provided that no person shall serve as a director
2 for more than two consecutive years without a
3 period of at least one year between terms of
4 service;

- 5 (D) The powers and duties of the board;
- 6 (E) The compensation, if any, of the directors; and
- 7 (F) Whether or not the board may engage the services
- 8 of a manager or managing agent, or both, and
- 9 specifying which of the powers and duties granted
- 10 to the board by this chapter or otherwise may be
- 11 delegated by the board to either or both of them;

12 (2) Method of calling meetings of the apartment owners;
13 what percentage, if other than a majority of apartment
14 owners, constitutes a quorum; what percentage,
15 consistent with this chapter, is necessary to adopt
16 decisions binding on all apartment owners and that
17 votes allocated to any area that constitutes a common
18 element under section 514A-13(h) shall not be cast at
19 any association meeting, regardless of whether it is
20 so designated in the declaration;

21 (3) Election of a president from among the board of
22 directors who shall preside over the meetings of the

- 1 board of directors and of the association of apartment
2 owners;
- 3 (4) Election of a secretary who shall keep the minute book
4 wherein resolutions shall be recorded;
- 5 (5) Election of a treasurer who shall keep the financial
6 records and books of account;
- 7 (6) Operation of the property, payment of the common
8 expenses, and determination and collection of the
9 common charges;
- 10 (7) Manner of collecting common expenses, expenses, costs,
11 and fees recoverable by the association under section
12 514A-94, and any penalties and late charges;
- 13 (8) Designation and removal of personnel necessary for the
14 maintenance, repair, and replacement of the common
15 elements;
- 16 (9) Method of adopting and amending administrative rules
17 governing the details of the operation and use of the
18 common elements;
- 19 (10) The restrictions on and requirements respecting the
20 use and maintenance of the apartments and the use of
21 the common elements, not set forth in the declaration,
22 as are designed to prevent unreasonable interference



1 with the use of their respective apartments and of the
2 common elements by the several apartment owners;

3 (11) The first meeting of the association of apartment
4 owners shall be held not later than one hundred eighty
5 days after recordation of the first apartment
6 conveyance; provided forty per cent or more of the
7 project has been sold and recorded. If forty per cent
8 of the project is not sold and recorded at the end of
9 one year, an annual meeting shall be called; provided
10 ten per cent of the apartment owners so request;

11 (12) All members of the board of directors shall be owners,
12 co-owners, vendees under an agreement of sale, or an
13 officer of any corporate owner of an apartment. The
14 partners in a general partnership and the general
15 partners of a limited partnership shall be deemed to
16 be the owners of an apartment for this purpose. There
17 shall not be more than one representative on the board
18 of directors from any one apartment;

19 (13) A director shall not cast any proxy vote at any board
20 meeting, nor shall a director vote at any board
21 meeting on any issue in which the director has a
22 conflict of interest;

- 1 (14) No resident manager of a condominium shall serve on
- 2 its board of directors;
- 3 (15) The board of directors shall meet at least once a
- 4 year;
- 5 (16) All association and board of directors meetings shall
- 6 be conducted in accordance with the most current
- 7 edition of Robert's Rules of Order;
- 8 (17) All meetings of the association of apartment owners
- 9 shall be held at the address of the condominium
- 10 project or elsewhere within the State as determined by
- 11 the board of directors; and
- 12 (18) Penalties chargeable against persons for violation of
- 13 the covenants, conditions, or restrictions set forth
- 14 in the declaration, or of the bylaws and
- 15 administrative rules adopted pursuant thereto, method
- 16 of determination of violations, and manner of
- 17 enforcing penalties, if any."

18 SECTION 2. Section 514B-107, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§514B-107 Board; limitations.** (a) Members of the board
21 shall be unit owners or co-owners, vendees under an agreement of
22 sale, a trustee of a trust which owns a unit, or an officer,



1 partner, member, or other person authorized to act on behalf of
2 any other legal entity which owns a unit. There shall not be
3 more than one representative on the board from any one unit.

4 (b) No resident manager or employee of a condominium shall
5 serve on its board.

6 (c) An owner shall not act as an officer of an association
7 and an employee of the managing agent retained by the
8 association. Any owner who is a board member of an association
9 and an employee of the managing agent retained by the
10 association shall not participate in any discussion regarding a
11 management contract at a board meeting and shall be excluded
12 from any executive session of the board where the management
13 contract or the property manager will be discussed.

14 (d) Directors shall not expend association funds for their
15 travel, directors' fees, and per diem, unless owners are
16 informed and a majority approve of these expenses; provided
17 that, with the approval of the board, directors may be
18 reimbursed for actual expenditures incurred on behalf of the
19 association. The minutes shall reflect in detail the items and
20 amounts of the reimbursements.

21 (e) Associations at their own expense shall provide all
22 board members with a current copy of the association's



1 declaration, bylaws, house rules, and, annually, a copy of this
2 chapter with amendments.

3 (f) The directors may expend association funds, which
4 shall not be deemed to be compensation to the directors, to
5 educate and train themselves in subject areas directly related
6 to their duties and responsibilities as directors; provided that
7 the approved annual operating budget shall include these
8 expenses as separate line items. These expenses may include
9 registration fees, books, videos, tapes, other educational
10 materials, and economy travel expenses. Except for economy
11 travel expenses within the State, all other travel expenses
12 incurred under this subsection shall be subject to the
13 requirements of subsection (d).

14 (g) No person shall serve as a director for more than two
15 consecutive years without a period of at least one year between
16 terms of service."

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on July 1, 2010.

20

INTRODUCED BY:  _____



Report Title:

Condominium Associations; Board of Directors; Term Limits

Description:

Imposes term limits of no more than two consecutive years for members of the board of directors of a condominium association.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



February 1, 2010



Mililani Town Association

95-303 Kaloapau Street
Mililani Town, HI 96789
Phone (808) 623-7300

Sen. Rosalyn H. Baker, Chair
Sen. David Y. Ige, Vice-Chair
Comm. on Commerce and Consumer Protection VIA EMAIL:CPNTestimony@Capitol.hawaii.gov
State Capitol
Honolulu, HI 96813

Re: S.B. 2223 - RELATING TO CONDOMINIUM BOARDS OF DIRECTORS; Term limits
Hearing: 02-05-10 9:00am in conference room 229.

Dear Chair Baker, Vice-Chair Ige and Committee Members:

My name is Will Kane, Vice-President of the Mililani Town Association (MTA). As you may be aware, MTA encompasses 16,000 plus units involving both single family units and townhouse projects. Additionally, MTA contains over 50 separate AOA's, condominium and townhome associations.

MTA, along with the vast majority of associations within Mililani, *does not support* S.B. 2223 which will imposes term limits of no more than two consecutive years for members of the board of directors of condominium associations. Due to the complexities and sheer amount of rules, bylaws, and laws, as well as the actual management (physical and financial) of the association a director must learn, It usually takes a minimum of 2 years for a new director just to get familiar with the full scope of his/her board responsibilities.

As elected officials, you are well aware that there is already a process in place to limit the amount of time an official may serve whether in the legislature or on a condominium association board, that being the will of the voters. To require term limits for those serving on condominium boards will produce an undue burden upon the association as a whole, but more importantly, the homeowners themselves, who may suffer because of the mistakes of an inexperienced Board of Directors.

We accordingly urge this bill, as is, be deferred.

Sincerely yours,

Will Kane
Vice-President, Board of Directors

Cc: Senator Michelle Kidani
Senator Robert Bunda
Representative Marilyn Lee
Representative Ryan Yamane



February 1, 2010

Testimony S.B. No. 2223

Dear Senators,

Hawaii First is the third largest association management company in Hawaii. I **oppose** S.B. No. 2223. This Bill is a horrible piece of proposed legislation as it fails to accurately understand how condominium governance functions and its language is impractical. If this Bill were to pass, there would create chaos in condominiums. The current law provides that an association of 100 apartments or more requires a Board of 9 Directors unless otherwise stated in the Bylaws. Most Associations in Hawaii have less than 9 Directors.

1. There are hundreds of condominiums in Hawaii with less than 100 apartments. Some as few as 2 apartments. Many contain from 2 to 20 apartments. It is a known problem that getting volunteers to serve on a condominium Board is challenging. To exclude an owner from serving on the Board based on a term limit summarily excludes those willing to serve. There is not a reliable pool of persons willing to donate their time in the association. If the owners do not want a person to serve as Director, owners can simply not vote for them. It happens every year.
2. On larger associations where there are typically 9 Directors, 3 Directors are each year for a three year term. The staggering of Directors terms provides a true benefit of continuity. Many Associations are engaged in long term issues and legal matters. To summarily exclude the Association leaders makes no sense. Since there is a small pool of volunteers willing to serve, term limits will result in persons less qualified being elected to the Board.
3. The language in the Bill is contradictory. It states that the directors will serve for 2 years or the term in the Bylaws. Then, a Director cannot serve for more than 2 years. Well, if the Bylaw term is 3 years, does that mean he has to resign in 2 years, although he has been elected to a 3 year term. What about all the small condominiums where there are few apartments and even less owners willing to serve? How do you handle a Director who is appointed during the year to fill a vacancy and that Directors future ability to serve. What about all the current elected Directors? The Bill fails to address this issue.
4. Hawaii has extensive condominium laws. Owners elect Directors and owners can amend their Bylaws on their own to provide term limits if they believe this issue is important. To summarily decide that term limits provide any benefit is without the knowledge and experience of how associations govern.

This is an issue best addressed by each condominium. Although rare, some owners object to the leadership by a long term Director, but having government force them out of office is not the right answer. Let the owners decide.

Sincerely,

Richard Emery
President





P.O. Box 976
Honolulu, Hawaii 96808

February 3, 2010

Honorable Rosalyn H. Baker
Honorable David Y. Ige
Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 2223/OPPOSED

Dear Chair Baker, Vice-Chair Ige and Committee Members:

I chair the CAI Legislative Action Committee. CAI opposes SB 2223. Adoption of that measure would cause great harm to consumers.

CAI does not endorse term limits for condominium directors, at all. Limiting terms to two years, in particular, would be both impractical and imprudent.

Experience is important. Many condominium associations are multi-million dollar enterprises. Some are worth many tens of millions of dollars, employ numerous people and are complex in any number of ways. All associations have nuanced business matters to address. Imposing term limits would negatively impact the business operations of condominium associations by depriving boards of continuity and by depriving directors of the opportunity to learn the job.

CAI notes the Legislature's previously expressed intention that condominium associations should be self-governing. CAI supports the fundamental principle of self-governance.

CAI speculates that persons who have been defeated in condominium elections might be supportive of this measure, but election outcomes are an expression of majority will. Current law (514B-123(h)(1), for example) provides a fair opportunity for all owners to submit their qualifications to their co-owners. There are no structural inhibitions to a candidate's fair opportunity to compete. If the notion is that incumbency has advantage, it remains true that discontented owners can and should mobilize to elect new directors.

Honorable Rosalyn H. Baker
Honorable David Y. Ige
February 3, 2010
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It is also true that discontented owners can and do successfully mobilize to elect new directors. CAI notes that Steve Glanstein, a Professional Registered Parliamentarian who has separately submitted testimony opposing this bill, has often worked for individuals pursuing removal of Board members.

Condominium associations are democratic institutions. The Legislature has provided a statutory architecture enabling a republican form of self-governance that should be respected and promoted.

CAI is generally concerned about proposals that would tend to inhibit condominium associations from exercising control over their own affairs or from making fundamental decisions for themselves. The right to vote for a candidate of one's choice should be considered to be fundamental.

In contrast, there is no fundamental right to be *elected*. The examples of spectacularly unqualified people demanding to be on condominium boards are legion.

Directors are fiduciaries, and they can be sued. Thus, owners with meritorious grievances have robust means of holding even the most entrenched directors accountable. Errant directors have been held to account in legal proceedings.

There is no obvious public interest that would be served by implementing a measure to interfere with the free choices of a condominium electorate. Even assuming that such an interest could be identified, that interest would not be served by a two year, or even two *term*, limit. Instead, a legislative policy choice to deprive consumers of their right to elect representatives consistent with their own preferences would have the practical effect of harming consumers by requiring that boards charged with serious responsibility be run by people without the experience to do the job.

A more mundane, but also pernicious, effect of term limits would be that many if not most condominium by-laws provide for terms greater than two years. This bill does not attend to the practical consequences of the expressed policy, and those consequences could not be easily managed in many cases.

Honorable Rosalyn H. Baker
Honorable David Y. Ige
February 3, 2010
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It is also true that, at many condominiums, there are no alternative candidates. The imposition of term limits would leave no one at the helm.

Term limits are a blunt instrument. If there is some unmet need, a scalpel should be used and a careful cut made after due consideration of all consequences of a proposed course of action.

CAI respectfully requests that the Committee hold or defeat SB 2223.

Very truly yours,

Philip S. Nerney

baker4 - Cathy

From: Tom Matthews [tom1@leis.net]
Sent: Monday, February 01, 2010 3:25 PM
To: CPN Testimony
Subject: SB 2223

This in regard to your proposed change to Condo Bylaw requirements reducing term from 3 to 2 years and requiring that directors not succeed themselves without a year's gap in service.

I am a condo director in a small commercial condo, with only a few owners eligible to be on the BOD. Worse we have been unable to get many owners to serve as directors at all. This new requirement will not be workable for our small condo and will result in difficulty maintaining BOD continuity as well.

If this change is made at least limit it to larger condo, say 50 units up.

Best Regards,
Thomas W Matthews
President
Trade West Inc
501 Sumner St, #621
Honolulu, Hawaii, USA 96817
ph 808-537-6937
fx/voicemail 808-564-0001

Mon, Feb 1, 2010
3:20:44 PM

baker5 - Leo

From: C. Tungpalan [ctungpalan@hawaii.rr.com]
Sent: Thursday, February 04, 2010 12:44 PM
To: CPN Testimony
Subject: SB 2223 Term limits for condo Board of Directors

I respectfully oppose this Bill. I am a current member of Makiki Bel-Aire Board of Directors. I was voted to my third term just a few days ago. We are a relatively small condominium, with only 60 units. A large number of units are owned by persons not living in Hawaii or even the United States. Also, the majority of our owners are aged. From the moment I purchased a unit at Makiki Bel-Aire, I was told by many of the long term owners that I should take on the responsibility of serving on the Board, since many of them had already "done their time." Our condo is required to have three Board members at all times, and we have the HARDEST time finding anyone willing to serve. In fact, we currently have one member wanting to resign because she just had a baby, yet we can find no one willing to replace her. The fact that two of us are willing to continue to serve until no longer elected to do so is the subject of much gratitude from our fellow owners. Further, I am a paralegal in the field of probate and trust administration and as such, I have a great deal of knowledge about the role and responsibilities of a fiduciary. A term limit on myself or anyone at Makiki Bel Aire who is willing to serve on the Board would be nothing but a hardship on us all.

Thank you for your time and consideration.

Catherine Tungpalan

baker5 - Leo

From: Bobndennis@aol.com
Sent: Thursday, February 04, 2010 11:09 AM
To: CPN Testimony
Subject: SB 2223

My name is Robert Gentry. I am President of the Board of Directors of The Tahitiene, Inc., a cooperative apartment building located at 2999 Kalakaua Ave in Honolulu. I am also the President of the Board of Directors of the Gold Coast Neighborhood Association. The GCNA is a 501c (3) neighborhood non profit established for the purpose of community enhancement. We have a membership of several residential buildings along Kalakaua Ave.

I am writing to oppose SB 2223. It just won't work. Why? Condominium and Cooperatives have a difficult time attracting members to serve on their boards of directors. It can be a time consuming, thankless position. It can be tedious, political, and require the utmost in diplomacy. Many folks don't want to participate. Limiting the length of time one may serve in a leadership capacity further limits the availability of qualified, interested leaders. Many of our buildings in our neighborhood could not function if SB 2223 were the law. Please don't add this burden to our current challenge of leadership development. Each building entity has governing documents that are produced democratically, and provide for the appropriate time limits for its leadership. Those policies are in place to support the particular needs of each building. They are working just fine in most cases. A new law which supercedes those local practices really damages the integrity and cohesiveness of our individual operations. Please do not support SB 2223.

Aloha and Mahalo,
Robert Gentry
923-4060

baker5 - Leo

From: GM [marcopoloaoao@hawaii.rr.com]
Sent: Thursday, February 04, 2010 10:06 AM
To: CPN Testimony
Subject: SB 2223

Aloha,

I am compelled to write because of the proposed term limits for association board of director members. I have been a general/resident manager in Hawaii for over 10 years now with most of this time spent working directly with boards. From my experience well tenured boards are the only way to limit as much as possible the liability for associations due to uneducated, improper decision-making.

Currently I am employed by the Association of Apartment Owners of the Marco Polo Apartments inc. The wealth of experience of the current members is irreplaceable. They know the what, how, when, and why certain actions were taken and a constant turning over of board members would be very inefficient. Learning the governing documents of the association and understanding the condominium law (514A-B) takes years of practice, especially from a volunteer perspective.

Board elections will be held this year in March. Five positions are open with only two new candidates running out of 586 residential units and four commercial units. If the proposed bill is passed, I am not sure we could fill board position and I could only believe that smaller properties would even have more challenges trying to fill board positions.

I consider tabling SB 2223 as the best option for citizens of Hawaii because of the obstacles mentioned.

Sincerely,

John Horvath ARM®
General Manager, Marco Polo
2333 Kapiolani Blvd. #207
Honolulu, HI 96826
Phone.(808) 946-9002 ext.3
Fax.(808) 949-6458

Nuuanu Brookside Association of Apartment Owners
55 South Judd Street, Honolulu Hawaii, 96817

Testimony on Senate Bill 2223
Relating to Condominium Boards of Directors

Committee on Commerce and Consumer Protection

By
By Jerry Zak, President

Friday, February 5, 2010

Chair Baker, Vice Chair Ige, and Committee Members,

I am Jerry Zak, president, Board of Directors for the Nuuanu Brookside Association of Apartment Owners.

On behalf of our board, I am providing testimony opposing Senate Bill 2223 that would limit an association director's term to two years and require sitting out a year before serving another term. Such restrictions would severely deplete the pool of volunteers who donate their time to our community and would weaken the continuity of leadership necessary to effectively undertake our responsibilities.

The Nuuanu Brookside Association of Apartment Owners represents 174 homeowners in the condominium complex at 55 South Judd Street, Honolulu, Hawaii. Since 1982, this association of elected, non-paid volunteer officers and directors has overseen the maintenance of the property, its amenities, and common areas; hired professional property managers, on-site resident managers, and security personnel; and carried out provisions of the association's governing documents and house rules.

Over those years, recruiting and retaining board members have been major challenges. This bill will severely hinder our ability to fill those positions with veteran and new directors. Further, while we support the intent of the bill to introduce new faces and new ideas to governing boards, we are concerned that by restricting terms, capable directors will leave the board after two years and not return. With increased director turnovers, our Association will lose invaluable knowledge, experience, and historical perspectives. We believe current condominium statutes, combined with appropriate association by-laws, provide sufficient guidelines for associations to carry out their fiduciary responsibilities.

We urge the committee to defer Senate Bill 2223. Thank you for this opportunity to share our concerns. We are available to answer your questions.

baker5 - Leo

From: Bruce Howe [bruceh@hmcmtg.com]
Sent: Thursday, February 04, 2010 9:01 AM
To: CPN Testimony
Subject: FW: SB No. 2223 - Condominium Board of Directors

From: Drew Camenson [mailto:nuuanudrew@hawaii.rr.com]
Sent: Thursday, February 04, 2010 8:26 AM
To: Bruce Howe
Subject: FW: SB No. 2223 - Condominium Board of Directors

From: LaraineDon@aol.com [mailto:LaraineDon@aol.com]
Sent: Wednesday, February 03, 2010 10:24 PM
To: nuuanudrew@hawaii.rr.com
Subject: Fwd: SB No. 2223 - Condominium Board of Directors

Drew,

I am forwarding this to you as I encountered problems sending it with the email address which was provided by Bruce. I am waiting for an email from him and may need your help in submitting my response which is due by Thursday, 2/4.

Laraine

From: LaraineDon@aol.com
To: CPNTestimony@Capitalhawaii.gov
Sent: 2/3/2010 10:20:40 P.M. Hawaiian Standard Time
Subj: Fwd: SB No. 2223 - Condominium Board of Directors

From: LaraineDon@aol.com
To: CPNTestimony@Capital.hawaii.gov
Sent: 2/3/2010 10:10:18 P.M. Hawaiian Standard Time
Subj: SB No. 2223 - Condominium Board of Directors

As the President of the Honolulu Park Place AOA Board of Directors, I am extremely concerned of the proposal SB Bo. 2223 which would limit the directors' initial term from three to two years and for more than 2 consecutive years without a period of at least one year between terms. This change will destroy the cohesive terms envisioned by the original drafters of condominium documents, and it would eliminate the historic knowledge that was intended to be preserved by the election process created by our By-Laws. Having predominately inexperienced directors on the Board with limited knowledge and experience will severely impair the Board's ability to fully execute its fiduciary responsibilities and act in the best interest of the Association. Many directors serve on or chair committees as required by our governing documents (i.e., Investment Committee, Rules Committee (fines/violations), etc.), and their effectiveness is largely based on their historic knowledge.

It has been my personal observation that it takes about a year for new directors to understand and learn the Board process after going through a complete cycle to include the budget formulation and approval

process, Roberts Rule of Order, and the building requirements and operations to effectively address the short and long term requirements.

Even with the current terms, it is difficult to find owners who are willing to spend the time to serve on the Board of Directors and who have qualifications and backgrounds which benefit the Association (e.g., litigations attorney, facilities/contract manager, accounting, computer, construction developer, personnel and resource management, which are currently found in our Board). To lose this wealth of knowledge and capabilities because of term limitations is ludicrous.

The current governing documents provide a means to remove any director should it be necessary that to super impose this additional limitation undermines the Condominium Board of Directors and will have a far reaching detrimental impact on condominium projects and owners. This measure is extremely short sighted, completely irresponsible and has no merits. I strongly urge that this amendment not be supported and passed.

Laraine Yoshioka
President, Board of Directors
Honolulu Park Place, AOA
Phone 546-1212

baker5 - Leo

From: Sam Shenkus [sam.shenkus@gmail.com]
Sent: Wednesday, February 03, 2010 9:34 PM
To: CPN Testimony
Cc: Sen. Roz Baker; Sen. David Ige
Subject: SB 2223, Opposed to Term limits for Condo Board of Directors to no more than two consecutive years

Aloha. I am a current member of the Marco Polo Board of Directors. I have served three terms on the Board, have lived in the Marco Polo for 26 years and serve on the board because I feel it is important to volunteer my time and energy to maintain and preserve the integrity of our building.

The Marco Polo has 568 residential units, approximately 1,500 residents and is a very dynamic building with significant budgets for both operations and reserves. I am very concerned that the intent of this bill has merit, however this bill will create a serious handicap in the budgeting, management and fiscal oversight of condominium associations. To limit the terms for a board member to no more than two consecutive years, for a building of our size, creates significant conflict with legally mandated responsibilities and in fact, with our building bylaws.

To be a director in this economic environment is especially challenging and not only must a director be familiar with all the laws and regulations of the building, but also familiar with accounting, foreclosure laws and growing issues of maintenance fee delinquency issues. In a perfect world, condominiums would have dozens of interested individuals who place volunteer service to their association as a high priority. The reality is that boards are usually a balance of diverse interests and individuals who learn over time that one individual cannot control an association. Time is also a major factor since it takes several months to become familiar with budgets, bylaws, operational maintenance issues, monthly committee/ board meeting agendas and priorities. The annual meeting also serves as a check & balance since association member owners elect the board members during annual meeting elections. If a board member does not properly serve their association members, that board member will not get reelected.

Two year term limits, especially in these economic times, is not in the best interest of associations. These are times for experienced and knowledgeable board members who are guided by the current governing documents. Please table this bill and thank you for your consideration and time.

Helene "Sam" Shenkus
2333 Kapiolani Blvd., #3103
Honolulu, HI 96826
(808) 944-8114
shenkus@cchono.com
sam.shenkus@gmail.com

baker5 - Leo

From: Joe Krahulik [krahulik001@hawaii.rr.com]
Sent: Wednesday, February 03, 2010 8:06 PM
To: CPN Testimony
Subject: S. B. No. 2223

Follow Up Flag: Follow up
Flag Status: Completed

I am President of the Board of Directors of Dowsett Point condominium. Having been on the Board for many years, I know how difficult it is to find concerned & competent Directors. To make Director Term Limits law is a very bad idea. Director Term Limits would force off the Board what few concerned & competent Directors we now have. Every owner is NOT necessarily concerned nor competent to be a Director. Please do NOT pass S. B. No. 2223.

**Joseph Krahulik
President
Board of Directors
Dowsett Point**

**Testimony of Thomas J. Smyth
Secretary, Board of Directors, AOA Harbor Square**

**Before the
Senate Committee on Commerce and Consumer Protection**

Friday, February 5, 2010, 9:00 a.m. Conference Room 229

**On
SB 2223 Relating to Condominium Boards of Directors**

Chairs Baker, Vice Chair Ige and Committee Members:

As a relatively long time member of a condominium Board of Directors, I oppose SB 2223 which puts a two-year term limit on the service of directors. Permitting them to again serve, after a one-year hiatus, does not make any sense if the purpose of this measure is to break-up cliques of long-serving members.

Issues that come before condo directors vary building-to-building, but there are many that are common to most. Our building is more than twenty years old and ongoing repair and maintenance projects alone often take more than two-years to setup, prioritize and fund. We are currently in the third year of a series of more than 50 renovation projects. They are funded by a board-approved bank line of credit which will convert to a standard loan after several years. It is hard to imagine how complex it would be for members who join the board and are expected to immediately make project approval decisions.

It took more than eight years for our board to reach agreement on a process to convert from leasehold to fee ownership. Two-year directors would be hard pressed to handle this type of long negotiation with consistency and understanding of a very complex process.

Our board does not have term limits, but we have found that board members move away, change jobs or otherwise serve a term or two and move on. We feel that this type of natural board rotation based on three-year terms removes any issues associated with serving too long.

Finally, it has been my experience and that of friends, who serve on other boards, that it is very difficult to get owners to serve on the board. Directors often spend hours at board and committee meetings as well as attending training and informational sessions.

There are no "Purpose" or "Findings" sections in this bill, so it is not obvious why this drastic change is being proposed. There is also no indication when this new criteria would be effective for currently serving directors; immediately or at the end of current terms.

Thank you for the opportunity to provide comments on this important bill.

baker5 - Leo

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 02, 2010 6:17 PM
To: CPN Testimony
Cc: AlohaAgie@gmail.com
Subject: Testimony for SB2223 on 2/5/2010 9:00:00 AM

Follow Up Flag: Follow up
Flag Status: Completed

Testimony for CPN 2/5/2010 9:00:00 AM SB2223

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: Agnes Ringle
Organization: Pacific Village AOA
Address: 98-314 Ualo St Aiea, HI 96701
Phone: 808 488-2489
E-mail: AlohaAgie@gmail.com
Submitted on: 2/2/2010

Comments:

Opposed because it micromanages condos by imposing term limits on directors instead of letting the condos do it.



HAWAIIANA

Hawaiiana Management Company, Ltd.
Pacific Park Plaza, Suite 700
711 Kapiolani Boulevard
Honolulu, Hawaii 96813
Tel: (808) 593-9100
Fax: (808) 593-6333
Internet: www.hmcmgt.com

February 3, 2010

IN OPPOSITION TO SENATE BILL 2223, RELATING TO CONDOMINIUM BOARDS OF DIRECTORS

Dear Senators:

The Board of Directors of the Honolulu Tower AOA Board of Directors is opposed to this bill.

Honolulu Tower is a 396- unit residential condominium building located in the heart of Honolulu. The Board is opposed to this bill for the following reasons:

- The AOA is governed by its own Declaration and By-Laws. Currently the By-laws require 9 Board members, three of which are elected every three years. By passing this Bill, you are re-writing the Condo documents.
- It is very difficult to find people to run for the Board. Even in a building this size, you may only have a handful of people who want to volunteer to serve.
- Being a Board member is a lot of work. It is very time consuming. Many people do not have the time to devote.
- Owner occupancy is also decreasing in many of the buildings which make finding volunteers more difficult.
- Many people who volunteer do not serve a full term for various reasons.
- Some Boards cannot even find nine volunteers to serve during a full year.
- Why would you impose mandatory term limits on a voluntary position?
- Even when you can find volunteers who are willing to serve a full three year term, many of the capital improvement projects take longer than three years to complete. Continuity and having history on a Board is important for any Board.
- Most condos have multi-million dollar budgets to manage. Continuity on a Board is critical.

The Board of Directors of the Honolulu Tower AOA asks you not to approve this Bill.

Thank you for your consideration.

Sincerely,

baker4 - Cathy

From: Ted Walkey [tedwalkey@hmcmtg.com]
Sent: Tuesday, February 02, 2010 11:39 AM
To: CPN Testimony
Cc: Steve Glanstein; Philip Nerney; Bruce Howe; Eric M. Matsumoto; Ted Walkey; Philip L. Lahne Esq.; Richard Ekimoto; Al Denys; Alan Takumi; Bruce Erfer; Jadean Carvalho; Joani Taylor; Joyce Neeley; Kapono Kiakona; Richard Emery; Rohit Mehta; Joyce Y. Neeley
Subject: SB 2223

Also submitted on the WEB

SB 2223

RELATING TO CONDOMINIUM BOARDS OF DIRECTORS.

Imposes term limits of no more than two consecutive years for members of the board of directors of a condominium association.

CPN

With 20 years experience with condominium boards, I am definitely **opposed** to term limits for directors. It is very hard to find qualified directors who have even taken the time to read their bylaws, let alone HRS-514B. Forcing associations to elect new directors every two years will surely lead to mismanagement due to lack of corporate history, experience and education.

I believe this legislation was proposed by someone with a personal agenda and little, if any, commitment to the good of the association.

Imagine State management and legislation if legislators were required to leave office one out of every three years.

HRS-514A does not need to be amended – 514B controls.

Ted Walkey PCAM®, AMS®

Management Executive
Hawaiiana Management Company Ltd.
711 Kapiolani Boulevard, Suite 700
Honolulu, HI 96813
TedWalkey@hmcmtg.com
Direct (808) 593-6868
Cell (808) 341-7739
Fax (808) 447-5156

baker4 - Cathy

From: joneshi@aol.com
Sent: Monday, February 01, 2010 1:48 PM
To: CPN Testimony
Subject: S.B NO. 2223 Director Term Limits

I am totally against this amendment to limit Director terms to two consecutive years and a period of one year in between. By making this change an association will not have people in office who are familiar with the operations of the association. Also for associations like ours there would probably be no board at all. There is absolutely no interest by the apartment owners of our association out side of the current board members. We hold board meetings every other month plus our annual mtg. all of which are posted for all apartment owners to see and who would like to attend and no one ever shows up (not even for the annual mtg). When we do have a vacancy on our 6 member board we have to go door to door to find someone who might be interested. Our board members are very dedicated and knowledgeable in the operations of our association and care about the running and upkeep of our property. If we are limited to two year terms who is going to oversee the operations of our association when we can't find people to take our place.

Please DO NOT pass legislation S.B. NO 2223

Sincerely,
Suzanne Jones
Board of Directors Holaniku Hale Town House Assoc.

TESTIMONY

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

NOTICE OF HEARING

DATE: Friday, February 05, 2010
TIME: 9:00 a.m.
PLACE: Conference Room 229

Re: SB 2223 Relating to Condominium Boards of Directors

Madam Chair and Members of the Committee on Commerce and Consumer Protection.

My wife and I provide this testimony in favor of SB 2223.

My wife and I own two condominiums and have experienced deception and abuse of authority by members of the association boards as they become entrenched in positions of power over other owners and residents.

We believe that this provision in the condominium law(s) will lead to better conduct and resulting stewardship as owners feel compelled to take responsibility for the maintenance of the building, its common area and security of residents.

We feel that this is a GIANT step forward.

Thank you for allowing this brief statement and thank you for caring.

Charles & Margaret Torigoe
La Casa & Ridgecrest Condominiums

Joanne Taylor
2333 Kapiolani Blvd.
Honolulu, HI 96826

Senator Rosalyn Baker, Chair
Senator David Y. Ige, Co-Chair
Committee on Commerce and Consumer Protection
415 S. Beretania, Rm. 229
Honolulu, HI 96813

RE: SB 2223, OPPOSED, Hearing 2/5/2010 9:00 A.M.

Term limits for condominium Board of Directors to no more than two consecutive years.

I am a current member of Marco Polo Board of Directors. Having been elected to serve nine terms on the Marco Polo Board of Directors over a period of thirty one years, I respectfully oppose adoption of SB 2223 imposing the two consecutive year term limit, as it would create significant hardship and risk on the oversight and management of association business.

Being a constructive board member requires a personal commitment to volunteer many hours of time both in meetings and research. Historically, few Association members are either willing or able to make such a commitment. Association members, satisfied with the course their Association is taking, are thankful for the few members who are willing to donate their time and gratefully continue to elect them to the board when their terms expire.

Historical knowledge on a board is an invaluable asset. Often new board members in their enthusiasm attempt to implement programs or policies that have already been tried and failed. To become familiar with past decisions and the reasons behind them takes a significant amount of time. To limit this learning process to two years could result in a waste of time and recourses.

For a director to become familiar with all the various laws and rules that regulate the scope of all board members duties takes many, many hours. Additionally to become familiar with the technical terminology of the multiple intricacies a board addresses is a learning process that requires time and dedication. To limit this learning experience to two years could result in faulty decision making.

The fiscal responsibility of the board entails proper budgeting, money management, expenditure recording and long range planning. To become familiar with the accounting system and the various components of the infrastructure with all the related requirements to maintain them requires a significant amount of knowledge. To limit this learning experience to two years could result in flawed fiscal management.

All board members have a fiduciary duty to act responsibly in the best interest of the Association as a whole. Some people wish to serve on a board to implement their own personal agenda, which may or may not conflict with the best interest of the Association. Two year limits invites a situation which could expose the Association to potential litigious events as it is not enough time for some directors to understand their duty is to the Association as a whole.

Our current governing documents and HRS provide adequate guidance. I request you table this bill.

Thank you for your time and consideration of this request.
Joanne Taylor

1001 Bishop Street, Suite 780
Honolulu, Hawaii 96813-3410
February 1, 2010

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
REGARDING SENATE BILL 2223

Hearing Date: FRIDAY, February 05, 2010
Time : 9:00 a.m.
Place : Conference Room 229

Sen. Baker and Members of the Committee,

My name is John Morris and I am testifying against SB 2223. I have been involved with condominiums since 1988, when I served as the first condominium specialist with the Hawaii real estate commission (from 1988 to 1991). Since then, I have served as an attorney advising condominium associations.

During that time, I have often heard claims (and seen bills introduced) that the terms of directors serving on boards should be limited, as SB 2223 proposes to do. Nevertheless, term limits on board members interfere with the self-governance principle of condominium associations without providing a significant benefit.

Many condominium associations have problems even finding sufficient owners to serve on the board. This bill will create serious problems for those associations by forcing qualified owners to resign.

Moreover, even when board members serve for many years, that is often because the majority of owners appreciate the job they are doing. In fact, in my experience, if board members are doing a poor job, they are often not reelected or they are removed, using the procedures the legislature has already provided in the law.

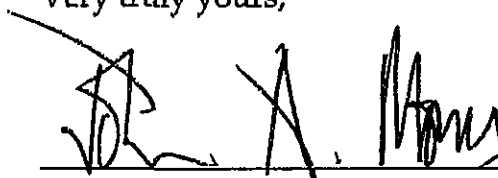
Finally, those owners who claim that the terms of directors should be limited often do so because they have run for board but failed to be elected. Sometimes that is a result of the control of the existing board. Nevertheless, it is just as common, if not more common, to find that those owners who are not elected lack the support of their fellow owners. In those cases, SB 2223 will interfere with the rights of owners to elect the directors they choose.

Testimony re: SB 2223
Hearing Date: February 1, 2010
Page 2

In summary, SB 2223 interferes with the ability of condominium owners to run their own associations by artificially limiting the terms of those who are serving on the board. In that way, the bill disrupts the condominium self-governance principles that allow owners to select their own board members. Therefore, I respectfully suggest that the committee hold this bill.

Thank you for this opportunity to testify. Please contact me at 523-0702 if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Morris", written over a horizontal line.

John A. Morris

JAM:alt

baker4 - Cathy

From: Bruce Howe [bruceh@hmcmgt.com]
Sent: Monday, February 01, 2010 12:23 PM
To: CPN Testimony
Subject: SB 2223 Term limits for Condo Boards

Following is a copy of my recent transmittal to the Boards of the Associations I manage. I cannot think of a more appropriate way to distribute it to you in order to convey more articulately the reason to kill this bill.

This is one of the most ridiculous pieces of legislation I have encountered. (read the underlined portions) It would limit each of your terms to two years, with no chance for re-election for at least another year when your documents provide for three year terms with no limit on consecutive terms. Just think about the impact on your association if this is passed. Not only would it destroy the cohesive terms envisioned by the original drafters of your documents, but it would eliminate the historic knowledge that was intended to be preserved by the election process created by your By-Laws. This type of legislation only comes up when some disgruntled person presents it to a legislator who is a friend with no concept of what he just introduced. What a great way to govern!

Bruce Howe

Steve Glanstein
Professional Registered Parliamentarian
P. O. Box 29213
Honolulu, HI 96820-1613

February 1, 2010

Sen. Rosalyn Baker, Chair
Sen. David Y. Ige, Vice Chair
Committee on Commerce and Consumer Protection
Hawai'i State Capitol, Room 229
415 South Beretania Street
Honolulu, HI 96813

RE: SB2223; Testimony in OPPOSITION; Hearing Date: 2/5/2010 9:00 a.m.; sent via web.

Dear Chair Baker, Vice-Chair Ige, and Members of the Committee:

I am an experienced Professional Registered Parliamentarian and have worked with community associations every year since I began my practice in 1983. I was also a member of the Blue Ribbon Recodification Advisory Committee that presented the recodification of Chapter 514B to the legislature in 2006.

It has been my custom for many years to assist the community based upon my experience with numerous condominium, cooperative, and planned community association meetings (over 1,200 in 26 years). This testimony is provided strictly in that capacity.

SB2223 will limit the terms of condominium board members by stating, "(g) No person shall serve as a director for more than two consecutive years without a period of at least one year between terms of service." (Emphasis added.)

SB2223 proposes to amend HRS §514A-82(a)(1)(C) and add a new §514B-108(g).

A. Proposal to amend HRS §514A-82(a)(1)(C) is flawed

I believe the proposal to amend §514A-82(a) is flawed. §514A-82 consists of two subsections §514A-82(a) and §514A-82(b).

§514A-82(a) was designed to apply to new association bylaws. It had no retrospective application to pre-existing association.

§514A-82(b) was designed to take effect as part of an association's bylaws. It states in part, "The provisions of this subsection shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date."

§514A-82(a) became irrelevant for new associations when the Chapter 514B recodification was effective, July 1, 2006. (Refer to §514B-21 and §514B-22 for applicability of Chapter 514B.)

The Attorney General has already issued an opinion regarding §514A-82(a) and (b)¹.

SB2223's proposal to amend §514A-82(a)(1)(C) makes no sense since all new condominiums must follow Chapter 514B and the mandate in §514A-82(a)(1)(C) does not apply retrospectively to older condominiums.

B. Associations may still establish their own term limits

§514B-108(b) already requires that association bylaws provide for, "(3) The qualifications, powers and duties, terms of office, and manner of electing and removing directors and officers and the filling of vacancies."

§514B-108(d) states, "Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate."

Associations may impose their own term limits **through their bylaws**.

C. Proposal to amend HRS §514B-107 has numerous unintended consequences

Hawaii has about 1667 condominium associations or about 156,177 homes. Many of these condominium associations have boards with 7 or 9 members and 3 year terms.

Board members couldn't possibly serve their 3 year term if they were limited to "two consecutive years." Board members with 2 year terms would begin to understand board functions and responsibilities and they would become ineligible to continue serving their association after their second year.

¹ This interpretation came from an Attorney General opinion, dated November 7, 1986 to Sen. Cobb. The most efficient reference is from the Condominium Review Committee of the Real Estate Commission meeting minutes, January 11, 2006. Ref http://hawaii.gov/dcca/real/condo_ed/condo_min/crcmin_2006/crc0601.pdf

"The Director's response noted that the applicability of any new condominium law to existing condominium associations has been based on a number of Attorney General (AG) Opinions to the Legislature over the past twenty years. The most recent opinion is contained in a report to the 1997 Legislature on Act 303 (SLH 1996). Although it concerns the applicability to common interest communities, the opinion and the case law is similar to those provided previously to the Legislature and appears would be applicable to the new Condominium Law. It is a constitutional issue on the 'state impairment of contracts and retroactive application of the law.' **He also noted that the existing condominium bylaw provision (section 514A-82) is based on an AG Opinion. In that, the section is bifurcated into subsection a. and subsection b., in which subsection a. has prospective application and subsection b. has retrospective application to all condominium associations including existing ones.**" (Emphasis added.)

Many condominium associations have problems obtaining board members. Board members are generally unpaid volunteers.

Board members HAVE LESS RIGHTS and MORE RESPONSIBILITIES than other owners. They must be examples of good condominium living, are not allowed to have special favors, and can't even vote themselves an annual dinner without approval by a majority of the association.

SB2223 fails to consider smaller family-style condominiums. If this bill becomes law, these smaller condominiums may have trouble filling vacancies, electing board members, etc.

If SB2223 becomes law on July 1, 2010 (Section 4) then it will adversely affect all board members elected or appointed prior to July 1, 2008 for 3 year terms.

These board members will be serving in violation of the 2 consecutive year limit on July 1, 2010.

D. Purpose of Chapter 514B is to reduce micro management²

The 2000 Legislature recognized that "[Hawaii's] condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micro manages condominium associations . . . [t]he law is also overly regulatory, hinders development, and ignores technological changes and the present day development process."³

The Legislature directed the Real Estate Commission of the State of Hawaii to review Hawaii's condominium property regimes law, and to submit draft legislation to the 2003 Legislature that will "update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law."⁴(Emphasis added.)

This was one of the major reasons for the Chapter 514B recodification of the condominium property regimes law.⁵

SB2223 represents another proposal to micro manage condominium associations without any compelling public interest.

²http://hawaii.gov/dcca/real/condo_ed/condo_recod/condo_workingrecod/recod_final/part-i-final-draft.pdf

³ Act 213, SLH 2000, Act 164, SLH 2004.

⁴ Ibid.

⁵ http://www.capitol.hawaii.gov/session2004/bills/SB2210_cd1.htm

The owners of Hawaii's 1,667-plus condominiums are already required to have bylaws that manage the election and terms of directors.

The owners should decide the membership of their board, not our legislature.

I ask that you hold or defeat this bill.

I look forward to any discussions of this proposal. I may be contacted via phone: 423-6766 or by e-mail: steveghi@gmail.com. Thank you for the opportunity to present this testimony.

Sincerely,



Steve Glanstein
Professional Registered Parliamentarian

baker4 - Cathy

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2010 7:50 AM
To: CPN Testimony
Cc: khillside@hotmail.com
Subject: Testimony for SB2223 on 2/5/2010 9:00:00 AM
Attachments: Testimony for SB2223#266958.cwk (WP).pdf

Testimony for CPN 2/5/2010 9:00:00 AM SB2223

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: Bruce Erfer
Organization: Individual
Address: 96 South Iwa Place Lahaina, Hawaii 96761
Phone: 808-667-6066
E-mail: khillside@hotmail.com
Submitted on: 2/3/2010

Comments:

SB 2223, RELATING TO CONDOMINIUM BOARDS OF DIRECTORS:

SB 2223 imposes term limits of no more than two consecutive years for members of the board of directors of a condominium association.

Although my board member experience is with a homeowner association (PCA), I am strongly opposed to any term limits dictated by the legislature. I have been on our board for eight consecutive years, serving as President, Secretary, and currently Treasurer. It takes a board member two years of service to simply understand the complexity of documents, regulations, and history of the association.

Our association by-laws dictates seven board members with 3-year staggered terms. For well over a year we have been without a 7th board member, as we have been unable to recruit a volunteer. Furthermore, if we were limited to two year terms, we'd now only have three members on the Board and would be unable to function without additional volunteers. It is difficult enough for us to recruit qualified volunteers. A limit on years of service or terms would simply degrade the overall performance of an association.

Term limits makes little or no sense in this application. Furthermore, as written, the proposed bill does not intelligently address the following situation: With our 3-year staggered terms, we often have an elected board member who sells his house, dies, or simply resigns during his term. If a person were elected to replace the board member with only one year remaining on his term, does this mean that if the replacement then wanted to run for another 3-year term, that they could only serve the first year?

Lynne Matusow
60 N. Beretania, #1804
Honolulu, HI 96817
808 531-4260

February 3, 2010

**TESTIMONY IN OPPOSITION TO SENATE BILL 2223, RELATING TO
CONDOMINIUM BOARDS OF DIRECTORS**

Dear Senators:

I am opposed to this bill for the following reasons and ask you to kill it.

As a long time condominium owner and a member of the board of directors, I believe this bill is ill conceived. I believe that the sponsors of the bill do not understand the business of running a condo. My building has almost 400 residential units. Sometimes only 30 owners attend our annual meetings; sometimes 100. Two years ago we had to fill three positions One incumbent was not seeking reelection, two were. Only two people from more than 100 offered to run. When we ask owners to run for the board at the annual meeting, it is hard to get anyone to run. They are concerned about the time they will have to devote, they work long hours, they are raising families, they are part time Hawaii residents, they don't speak English, they find running a business (which is what a condo is, as it has a budget, employees, and must comply with state and federal laws), and do not want the responsibility for running what can be defined as a multimillion corporation. Some will run, and resign a month or two later when they find out how much time is involved. Many buildings have fewer than fifty percent owner occupants. Your pool of persons to serve as director is greatly reduced from the total ownership when all these factors are considered.

You don't impose mandatory term limits on volunteers, just as you don't impose them on the board of directors of banks, oil companies, technology companies, etc. Imposing term limits tells people their services are not valued. If someone wants to devote time to an organization and learns they can only do so for a short period, they will go elsewhere, depriving the condo of capable leadership. Condo directors are volunteers, who give hours each month of their time to work for the project. They receive no pay, and often suffer from abuse from owners and tenants.

Condo directors make decisions regarding long-term capital improvement projects. These can include elevator modernization, water heater replacement, exterior painting, etc. From the time the board begins to discuss a project, until consultants are hired, bids prepared, offers accepted, and the work completed it can take years. The actual modernization of my building's elevators will take at least 2 years, and that is after all the other work has been done.

Our bylaws provide for three year terms, with one third of the board elected every year. You should not rewrite our bylaws. If the owners want term limits they can amend the governing documents or not reelect the incumbents. Mandatory term limits will destroy continuity and institutional memory.

I find it interesting that the State Senators who are paid public servants, with four year terms, wants to limit the terms of unpaid volunteers to two consecutive years. Perhaps we should start with the Senators limiting themselves to two consecutive years, with at least one year off before they can serve again.

Lynne Matusow