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March 4, 2021

To: The Honorable Kumar Barve, Chair, Environment and Transportation Committee

From: David R. Durfee Jr.

Re: House Bill 331 – Real Property – Cooperative Housing Corporations,
Condominiums, and Homeowner Associations – Virtual Meetings (SUPPORT)

I am writing in support of House Bill 331. House Bill 331 is a reintroduction of HB 1147 from the 2022 session, with one addition which I will address below. Please let me adopt the statement in support of HB 1147 that was provided by Assistant Attorney General Karen Straughn for the remainder of the bill.

HB 331 differs from HB 1147 by adding subparagraphs to the cooperative housing corporation, condominium associations, and homeowners associations title or subtitles that say that “A MEETING OF THE BOARD OF DIRECTORS HELD BY ELECTRONIC TRANSMISSION IS DEEMED TO BE A CLOSED MEETING AND MAY BE HELD ONLY IN ACCORDANCE WITH [the relevant provision of this [SUB]TITLE.”

The term “electronic transmission” is undefined in the Homeowners Association subtitle, but it is defined in §1-101(m) in the Corporations and Associations Article to mean:

- (1) “Electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that:
 - (i) May be retained, retrieved, and reviewed by a recipient of the communication; and
 - (ii) May be reproduced directly in paper form by a recipient through an automated process.
- (2) “Electronic transmission” includes:

- (i) Electronic mail;
- (ii) Facsimile transmission;
- (iii) Internet transmission; and
- (iv) The use of or participation in one or more electronic networks or databases, including one or more distributed electronic networks or databases.

That definition clarifies that electronic communications tools that do not permit a board and the community to truly “meet” in the open, are “closed” meetings. It has been my experience¹ that an association could use emails to conduct association business, thereby avoiding the requirement of conducting business in open meetings. The intent of the quoted language is to close that loophole.

It would be my preference, however, that the definition be added to the homeowners association and the condominium association subtitles for clarity. Ms. Straughn of the Attorney General’s Office already has expressed her office’s view that is considers email meetings to be closed meetings, and it would be a shame if the language that is being added to HB 331 – out of an abundance of caution – failed to accomplish that objective.

For these reasons, I ask that the Environment and Transportation Committee return a favorable report on this bill.

cc: The Honorable Jen Terrasa

¹ My interest in this matter stems from my service on the board of my community’s homeowners’ association, which has been in existence since 1975. In that time, no one has any recollection of any action having been taken to enforce our declaration of restrictions. The Board last year decided that it should start enforcing some of the restrictions, deciding through emails what the process would be to identify homeowners who were not in compliance, what the letters would say to advise the homeowners of their non-compliance, to include a threat that if the homeowner did not comply enforcement action would be taken. In the email exchanges I expressed my caution, especially over the issue of whether the violations being identified actually were violations, and even if so, whether the declaration of restrictions were enforceable by the board. Then, the President decided that follow-up letters were needed and suggested a subcommittee to send those letters. At that point I objected to the use of emails as a way of conducting the Board’s business but was ignored.