

Honolulu, Hawaii

APR - 7 2006

RE: H.B. No. 3225
H.D. 1
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Housing,
to which was referred H.B. No. 3225, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose of this measure is to fine-tune and amend the
recodified condominium law enacted in Act 164, Session Laws of
Hawaii (SLH) 2004, and Act 93, SLH 2005, which is set to become
effective on July 1, 2006.

Specifically, this measure substantively amends the
recodified law by:

- (1) Excluding consequential and special damages from the
type of damages that can be awarded and providing that
only punitive damages can be awarded if specifically
provided by law;
- (2) Adding, to the list of sections of the recodified law
that apply to condominiums existing before the effective
date of the law, two sections that delineate unit
boundaries in detail, and allocate the common profits
and expenses of the condominium property;
- (3) Providing that amendment of the declaration is not
required for changes to the use of common element, open
or landscaped spaces, and minor additions or alterations



that benefit a unit and do not substantially affect other owners;

- (4) Removing the requirement that sixty-seven percent of all owners must adopt any resolution authorizing fines that are not in the bylaws;
- (5) Providing that if a board establishes fines by resolution, it must allow an appeal to the board and give owners the right to initiate a dispute resolution process or administrative hearing;
- (6) Removing the requirement that owners must provide notice of intent to cumulatively vote before doing so;
- (7) Providing that the financing of insurance premiums by the association within the policy period is not a loan and may occur without a vote of the unit owners;
- (8) Adopting a standard of the nonprofit corporation law in Chapter 414D, Hawaii Revised Statutes (HRS), by requiring a minimum of three directors;
- (9) Changing, from seventy-five to seventy percent, the proportion of unit owners that must reside outside of a project with more than one hundred units to allow a majority to amend the bylaws to reduce the board, from a minimum of nine members to as few as five members;
- (10) Prohibiting an owner who is an employee of the association's managing agent from participating in discussions of a management contract, and from executive sessions where the management contract or property manager will be discussed;
- (11) Providing that the association may by resolution restate the declaration to correct the percentage of common interest so it totals one hundred per cent;
- (12) Providing that in the absence of protest, any owner of a unit owned by more than one person may cast the votes allocated to the unit by proxy;



- (13) Specifying that the distribution of information as requested by the Real Estate Commission (Commission) is at the cost of the association;
- (14) Allowing the board with the majority vote or consent of the unit owners to require unit owners to obtain reasonable types and levels of insurance;
- (15) Allowing the association to demand and collect unpaid common expenses from the rental agent renting a unit;
- (16) Clarifying who constitutes a "lessee" for purposes of assessing the costs of lease rent renegotiation;
- (17) Making the effectiveness of all of Chapter 514B, HRS, certain by removing language providing for contingent enactment of a portion of the chapter;
- (18) Providing that the provisions of the Hawaii Administrative Rules controlling association replacement reserves will remain in effect until the Commission adopts replacement rules under the recodified law; and
- (19) Removing the repeal of Chapter 514A, HRS, and specifically defining the scope of its applicability upon enactment of the recodified law.

Testimony in support of this measure was submitted by the Hawaii Council of Associations of Apartment Owners; Hawaii Independent Condominium & Cooperative Owners; and Community Associations Institute, Hawaii Chapter. Comments on this measure were submitted by the Real Estate Commission and a concerned owner in an association of apartment owners.

Your Committee finds that this measure continues to be a work in progress with the interested parties having put forth considerable effort to resolve issues and offer amendments throughout this legislative session.

Your Committee further finds that the interested parties have reached consensus approval on the amendments offered in the testimony of Community Associations Institute, Hawaii Chapter. Accordingly, this measure has been amended by:



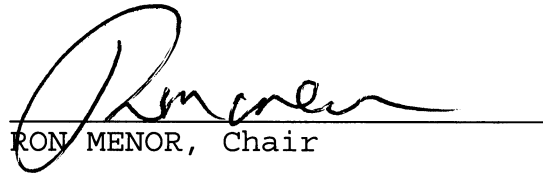
- (1) Applying parts of the Chapter 514B, Hawaii Revised Statutes, to preexisting condominiums, while protecting developers' reserved rights and protecting against unreasonable impairment of contract rights;
- (2) Providing for the adoption of amendments to condominium governing documents for condominiums created before July 1, 2006, by the vote or written consent of a majority of owners, while protecting developers' reserved rights;
- (3) Allowing owners to make changes to common element open spaces or other landscaped spaces or make minor additions or alteration to common elements for the benefit of individual units, provided that these changes, additions, or alterations do not interfere with the use or enjoyment of these elements by a nonconsenting party as provided in section 514B-140(c), Hawaii Revised Statutes,
- (4) Deleting the proposed amendment related to the developer's public report and submission of certain documents and information after the issuance of an effective date for the developer's public report;
- (5) Deleting the proposed amendment that public reports delivered to prospective purchasers must contain all amendments approved by the Commission as of the date the public report is delivered;
- (6) Deleting the proposed amendment related to escrow of deposits, the submission of documents by a developer, and the issuance of an effective date by the commission for the developer's public report;
- (7) Deleting the proposed amendment related to notice of disbursement of purchaser deposits prior to closing;
- (8) Deleting the proposed amendment related to notice of early conveyance or leasing of units before completion of construction. According to testimony submitted by the Real Estate Commission, the concerns underlying the deletions adopted in this paragraph, and paragraphs (4) to (7), will be administratively addressed by the Commission; and



- (9) Making technical, nonsubstantive amendments for purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Housing that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 3225, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 3225, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Housing,



RON MENOR, Chair



