



# HAWAII CIVIL RIGHTS COMMISSION

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February 7, 2008  
Rm. 329, 8:45 a.m.

To: The Honorable Maile Shimabukuru, Chair, and Members of the House Committee on Human Services and Housing

The Honorable Josh Green, M.D., Chair, and Members of the House Committee on Health

From: Sara Banks, Acting Chair, and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 2120

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

H.B. No. 2120 requires regular surveys of multi-unit residential buildings on specific matters relating to medical needs, accommodations for the disabled, and other special needs for emergency preparation purposes. The bill also requires multi-unit residential buildings to have and inform their residents of emergency evacuation plans.

The HCRC supports the apparent intent of the bill to provide for emergency preparedness, by ensuring that multi-unit residential building develop emergency evacuation plans and address medical needs, accommodations for the disabled, and other special needs. However, the HCRC has strong concerns over and opposes both (a) the proposed requirement that all multi-unit residential buildings be required to conduct regular surveys of all residents and obtain information relating to disabilities, medical conditions, medication, mental limitations, etc., and (b) the proposed shield from liability for loss due to a faulty survey, or the loss or misuse of the survey results.

The HCRC enforces state fair housing laws which prohibit discrimination on the basis of disability. HRS Chapter 515 and HAR Title 12, Chapter 46, Subchapter 20. Under our fair housing laws, it is a discriminatory practice for an owner, landlord, real estate agent, or any other person (e.g. manager, management company, association) to refuse to make reasonable

accommodations or modifications necessary to afford a person with disabilities equal opportunity to use and enjoy a housing accommodation. The first proposed statutory section is problematic in that it arguably diminishes existing fair housing protections against disability discrimination, by requiring inquiry into medical conditions and disabilities that may be unlawful, and by providing an exemption from liability for misuse of that sensitive and highly confidential information. In addition, it is unclear what will constitute a “faulty” survey, which may lead to unintended results. For example, if a multi-unit residential building manager makes unlawful survey inquiries that a resident refuses to answer because they are intrusive and illegal (e.g. inquiries into HIV status and medications), will that render the survey “faulty” and shield the building manager and owner(s) from all liability? The HCRC opposes both the statutory survey requirement and the shield from legal liability for misuse of the survey results.

In addition to concerns over the effect of the proposed statutory survey requirement on fair housing disability discrimination protections, the HCRC also notes that the survey requirement is potentially burdensome, and that the bill’s intent may be accomplished with a simple amendment to its less burdensome second proposed section.

The HCRC supports the second proposed statutory section, which requires the resident manager, condominium association, owner or other management to develop an emergency evacuation plan, post it and provide it to every unit/resident in the building. This section could be amended to accomplish the intent of the bill, by providing both notice and an opportunity to request reasonable accommodations or modifications necessary to address medical needs, disabilities, or other special needs. This would provide residents the opportunity to request accommodations or modifications without diminishing protections provided by the Americans with Disabilities Act and state and federal fair housing laws.

In summary, the HCRC: (1) opposes the proposed requirement that all multi-unit residential buildings be required to conduct regular surveys of all residents, obtain survey information relating to disabilities, medical conditions, medication, mental limitations, etc.; (2) opposes the proposed shield from liability for loss due to a faulty survey, or the loss or misuse of the survey results; and (3) supports the second proposed statutory section, which requires the development of emergency evacuation plans, with posting and notice to all units/residents.

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON  
HUMAN SERVICES AND HOUSING

AND

TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-FOURTH LEGISLATURE  
Regular Session of 2008

Thursday, February 7, 2008  
8:45 a.m.

**TESTIMONY ON HOUSE BILL NO. 2120, RELATING TO MULTI-UNIT  
RESIDENTIAL BUILDINGS.**

TO THE HONORABLE MAILE S. L. SHIMABUKURO, CHAIR,  
TO THE HONORABLE JOSH GREEN, M.D., CHAIR,  
AND MEMBERS OF THE COMMITTEES:

My name is Bill Chee and I serve as the Chair of the Real Estate Commission's ("Commission") Condominium Review Committee, and I thank you for the opportunity to present testimony on House Bill No. 2120, Relating to Multi-Unit Residential Buildings. The Commission has concerns with the bill and those concerns need to be addressed before we can support House Bill No. 2120.

The bill proposes to require regular surveys of residents of multi-unit residential buildings on specific needs and issues relating to medical needs, accommodations for the disabled, and other special needs for emergency preparation purposes and proposes to require multi-unit residential buildings to have and to inform their residents of emergency evacuation plans.

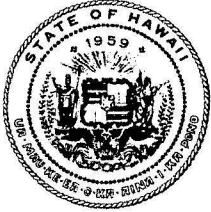
The Commission supports the intent of House Bill No. 2120 since it proposes to address an important subject. However, the Commission has

concerns that House Bill No. 2120, as drafted, does not provide definitions for “multi-unit residential buildings” and other proposed terms including “owner or other similar person.” As such, it is unclear whether the proposed legislation is intended to apply to every type of multi-unit residential building, e.g., 2-unit condominiums, duplexes, town homes, cooperatives, and unregistered condominium projects.

Further, House Bill No. 2120 fails to specify who or what agency or entity will administer and or enforce the requirements of the proposed legislation.

Lastly, it is unclear as to what penalties, if any, shall result for non-compliance with the proposed requirements.

Thank you for the opportunity to provide testimony on this measure.



## DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814  
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

February 7, 2008

### TESTIMONY TO THE HOUSE COMMITTEES ON HUMAN SERVICES AND HOUSING AND HEALTH

#### House Bill 2120 - Relating to Multi-Unit Residential Buildings

The Disability and Communication Access Board (DCAB) supports the intent of House Bill 2120 relating to multi-unit residential buildings but expresses concerns regarding the first section concerning mandatory registries.

DCAB has been actively involved in the development of the efforts to improve emergency evacuation of persons with disabilities in the event of a disaster. Emergency preparation and evacuation from multi-family residential buildings, particularly high-rise condominiums are of particular importance, whether there be a community disaster or an individual building fire. We applaud the efforts of the Legislature to improve policies and procedures for safe evacuation, especially with the shutdown of elevators in a fire.

We support completely the requirement for emergency evacuation plans as proposed on page 2, line 16. This will improve the knowledge of all residents and tenants.

We have concerns regarding a statutory requirement for a survey as mentioned on page 1, line 4. The vast majority of buildings do not have a 24/7 live-in manager or security. Gathering all the information of residents' medical or other critical personal needs, keeping the information confidential, and ensuring that it is given to first responders upon arrival on site is impractical unless there is 24/7 coverage. We believe that the information is useful IF the building is large enough to have a structure to properly use the information while keeping it confidential. However, to require this on all properties, regardless of size and management structure, would be a mistake. Small buildings of one owner with four units with no on site management would not know what to do with information gathered. This action should be encouraged and be voluntary, but not mandated by state law. Other less statutorily mandated actions should be pursued.

Thank you for the opportunity to provide testimony.

Respectfully submitted,

PATRICIA M. NIELSEN  
Chairperson  
Legislative Committee

FRANCINE WAI  
Executive Director



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February 5, 2008

**The Honorable Maile S.L. Shimabukuro, Chair**  
House Committee on Human Services & Housing  
State Capitol, Room 406

**The Honorable Josh Green, M.D., Chair**  
House Committee on Health  
State Capitol, Room 327  
Honolulu, Hawaii 96813

**RE:** H.B. 2120 - Relating to Multi-Unit Residential Building  
Hearing Date: Thursday, February 7, 2008 @ 8:45 a.m., Room 329

Dear Chairs Shimabukuro and Green and members of the House Committees on Human Services & Housing and Health:

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) opposes H.B. 2120§.

This measure proposes to require that the resident manager, condominium association, owner, or other similar person responsible for the management, operations, and safety of a multi-unit residential building to survey the residents of the building to establish each resident's medical or other critical personal needs.

We oppose this provision of the bill because it would impose a requirement that may violate the Fair Housing Act. The Fair Housing Act prohibits discrimination on the basis of disability in all types of housing transactions. Currently, it is the applicant(s) who should come forward and identify themselves as having special needs requiring accommodations other than what is provided. This is a proactive measure which has successfully served as a standard of behavior to comply with current law.

Please refer to - <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf> . The very act of issuing a survey, even if it is voluntary, can be construed to be discriminatory.

The intent of the measure appears to address the need to rescue people who, due to medical reasons, may need extra assistance in the case of a disaster or emergency. However, this bill places an undue burden on those named in section (a), to gather that information and has the unintended consequence of possibly violating the Fair Housing Act.



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We support the intent to require an emergency evacuation plan for the building, although we question the need to statutorily mandate the requirement as the majority of associations have a plan in place or are in the process of adopting plans.

As to an alternative, one might be the preparation of a plan with a notice to all residents.

Thank you very much for this opportunity to submit testimony.

HAWAII COUNCIL OF ASSOCIATIONS  
OF APARTMENT OWNERS

P.O. Box 726  
Aiea, Hawaii 96701  
Telephone (808) 566-2122

February 5, 2008

Rep. Maile Shimabukuro, Chair  
Rep. Karl Rhodes, Vice-Chair  
House Committee on Human Services and Housing

Rep. Josh Green, Chair  
Rep. John Mizuno, Vice-Chair  
House Committee on Health

Re: **Testimony in Opposition to HB 2120,  
Relating to Multi-Unit Residential Buildings  
Hearing on Thursday, Feb. 7, 2008, 8:45 a.m. Conf. Rm. #329**

Chairs Shimabukuro and Green and members of the Joint-Committee:

The Hawaii Council of Associations of Apartment Owners (HCAAO) represents 103 apartment associations with over 28,000 individual apartments. HCAAO has strong concerns regarding this bill and urges you to defer or table it.

**THIS IS ALREADY BEING DONE.** Many condominiums are already doing similar activities. They keep and update cards on every resident in the building with their contact information and emergency information. There are notices in the building asking residents to notify the resident manager if they want to be placed on a list that will allow them to be rescued in an emergency. The fire department requires all highrises to have an emergency evacuation plan with a copy filed with the fire station. Many buildings have lists of residents that may need assistance in leaving the building in an emergency, e.g., disabled, elderly, and those lists are supposed to be given to the first emergency responder so that they can be rescued.

**SURVEYS MAY BE HIPPA VIOLATIONS.** The HIPPA Privacy Rule mandates the protection and privacy of all health information. Are AOA's and their employees and agents exempt from HIPPA? Are the questions in the surveys HIPPA compliant. What happens if a resident just absolutely refuses to complete the questions on the survey or share or disclose their medical conditions.

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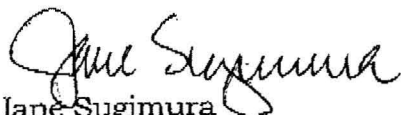
HB 2120 Re Multi-Unit Residential Buildings  
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**SUPPORT THE ESTABLISHMENT OF NATURALLY OCCURRING RETIREMENT COMMUNITITES ("NORC").** NORC'S are well established in New York City, Boston and cities in Florida. NORC'S are established in multi-unit residential buildings by the residents. The purpose of a NORC is to establish a voluntary network among the aging residents in a building so as to get services to that aging community in the building at competitive cost, e.g., house cleaning, grocery shopping, running errands, medical appointments, handy man jobs. The NORC also provides a social outlet for the aging residents in a building and the group monitors its own members, e.g., they will find out who needs ambulatory assistance, who are disabled and their specific disabilities, who has dementia, etc. and the NORC works with vendors and the building management to accommodate those needs without disrupting the care and maintenance of the building and the needs of other residents. Where NORC's have been recognized and established, the state (and federal government) allows them to apply for grants to pay for supplies, phones, temporary workers to assist in providing services to the elderly in that particular NORC.

Dr. Colin Hayashida has been working with high-rise buildings for years trying to set up such groups. I know that there is a group at Yacht Harbor Towers and at Mott-Smith where retired residents have set up something similar to a NORC. They work closely with the building management and the management appears to be grateful that the group is addressing the concerns of the elderly residents since this removes some of the burden from them in addressing those needs.

Rather than pass this bill, I feel that the State's time and resources are better spent in trying to establish NORC's in high-rise buildings. NORC's would allow elderly residents to age in place in their units among residents they know and who are similarly situated rather than having to live with strangers and compete for nursing home beds that just don't exist.

Thank you for allowing me to testify on this bill.

  
Jane Sugimura  
President

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02/05/08



HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING;  
HOUSE COMMITTEE ON HEALTH  
REGARDING HOUSE BILL 2120

Hearing Date : Thursday, February 7, 2008  
Time : 8:45 a.m.  
Place : Conference Room 329

Chairs Shimabukuro and Green and Members of the Committees:

My name is John Morris and I am testifying on behalf of the Hawaii Legislative Action Committee of the Community Associations Institute ("CAI") to express concerns about House Bill 2120. CAI Hawaii is the local chapter of a national organization dedicated to improving the management and operation of community associations nationwide. CAI has over 200 members in Hawaii and over 14,000 nationwide.

CAI opposes HB 2120 to the extent that it greatly expands the role of a condominium association in the management and operation of a condominium project. The intent of the bill seems worthwhile, but the burden it imposes should be assumed by the State Department of Health or someone better equipped to conduct the evaluations the bill requires.

Essentially, a condominium association is only a property maintenance organization established by its members for that purpose. Many smaller associations have no staff whatsoever or have one or two staff persons whose main responsibilities are hands-on maintenance. They are not equipped to administer the requirements of this bill.

Moreover, even assuming an association has the personnel to undertake the requirements of this bill, the information collected could quickly become out of date as people move into and out of the condominium project, forcing the association to continuously update the information, which might require additional staff. Certainly, given the turnover in many condominium projects, updating the survey only every six months -- as the bill requires -- might have very little benefit if an emergency occurred.

In addition, both federal and State law prohibit the association from discriminating against residents based on their disabilities and other health conditions, as well as imposing significant penalties for violating those laws. Nevertheless, this bill requires the association

CAI Testimony Regarding HB 2120  
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to request information on health conditions that those other laws prohibit the association from using as a basis for any type of association action. Once the association has that type of information on a resident, it will leave itself open for claims of discrimination if it takes action against the resident in the future.

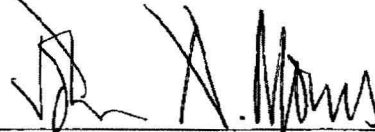
In addition, while the bill does provide associations with an exemption from liability, that is not the same as an exemption from being sued, especially under federal law. Certainly, creative attorneys may decide that, given the multitude of detailed requirements in the bill, it may be worthwhile suing an association for failure to meet those requirements, based on the possibility that some recovery may be possible despite the exemption from liability. Meritless claims may be filed and the cost of defense is high no matter what the merits of the suit.

There are better ways of trying to achieve the aims of this bill that are more consistent with the concept of self-governance that already exists in the condominium law. For example, the bill could simply allow the association to voluntarily collect the information required under the bill and provide the exemption from liability to encourage associations to do so. In that way, those associations that wish to and are capable of meeting the requirements outlined in the bill will have more of an incentive to do so.

For those reasons, CAI agrees with the intent of HB 2120 but opposes it in its present form, especially its attempt to make what should be voluntary action, mandatory.

Thank you for this opportunity to testify.

Very truly yours,



John A. Morris  
Hawaii Legislative Action Committee  
of the Community Associations Institute

**TO: HOUSE COMMITTEE on HEALTH**  
Representative Josh Green, M.D., Chair  
Representative John Mizuno., Vice Chair

**HOUSE COMMITTEE ON HUMAN SERVICES and HOUSING**

Representative Maile S. L. Shimabukuro, Chair  
Representative Karl Rhoads, Vice Chair

**FROM:** Eudice R. Schick  
PABEA (Policy Advisory Board for Elder Affairs)

**SUBJECT: HB 2120 RELATING TO MULTI-UNIT RESIDENTIAL BUILDINGS**

**HEARING:** 8:45 a.m. Thursday, February 7, 2008, Room 329

**POSITION:** Support of House Bill 2120

I am offering testimony on behalf of PABEA, the Policy Advisory Board for Elder Affairs, which is an appointed Board tasked with advising the Executive Office on Aging (EOA). My testimony does not represent the views of the EOA but of the Board. I am disabled and reside in a multi-unit residential building.

There is a tremendous need for legislation that will require, without liability, a building manager, or another person that may oversee any multi-unit residential building, to the best of their ability, obtain and maintain, a list of those residing in the multi-unit residential building that are not independent and would not be able to evacuate the building under their own power. This person's disabilities may be for a variety of reasons and not limited to the elderly, but also to the physical and mentally challenged. This information, although voluntary, must be as current as possible. Each building would need to obtain such information in a manner

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that they find best for their particular building. It would be difficult to completely standardize a form that would suite each and every building. Certain vital information should be required by law, where as other information may be better suited for one building than another. Every multi-unit residential building should be required to have a KNOX BOX, or something similar, located by the fire box. The information should be kept in this box. Keys to this box are held by the fire department and are unique to areas of the City and County, i.e. Honolulu, Maui, Kauai, Island of Hawaii, etc. Having a list certainly gives an elderly, disabled or mentally challenged person a much greater chance of survival should an emergency occur.

I urge you to support House Bill 2120 and to recommend passage of this Bill. Thank you for your consideration.

Respectfully,

Eudice R. Schick