

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

March 16, 2009
2:15 p.m.

TESTIMONY ON SENATE BILL NO. 1107, S.D. 2 - RELATING TO CONDOMINIUMS.

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is William S. Chee and I serve as the Chairperson of the Real Estate Commission's ("Commission") Condominium Review Committee. Thank you for the opportunity to present testimony on Senate Bill No. 1107, S.D. 2, Relating to Condominiums. The purpose of this bill is to merge the two condominium education funds into one fund, the Condominium Education Trust Fund, established pursuant to section 514B-71, HRS. The Commission strongly supports Senate Bill No. 1107, S.D. 2 with some recommended changes.

With the recommended changes to Senate Bill No. 1107, S.D. 2, the measure mirrors House Bill No. 956, H.D. 1, except for the defective date of January 12, 2020 inserted for purposes of encouraging discussion. House Bill No. 956 was heard by your Committee on February 9, 2009, and passed with amendments.

In recodifying the condominium law, it was always the intent that the Commission administer one education fund, the Condominium Education Trust Fund ("CETF"). This bill is to correct the unintended consequence in the 2003-2007 recodification efforts of Chapter 514A and the creation of Chapter 514B when, inadvertently, two separate

educational trust funds (the Condominium Management Education Fund, Chapter 514A, HRS; and the CETF, Chapter 514B, HRS) were set forth in two statutes.

Consequently, this bill amends Chapter 514A, HRS, and Chapter 514B, HRS, so that there is only one fund, by the:

- Repeal of the original Condominium Management Education Fund in Chapter 514A, HRS;
- Provision of language which allows for the transfer of all unexpended and unencumbered balances remaining in the Condominium Management Education Fund (Chapter 514A, HRS) to the credit of the CETF (Chapter 514B, HRS);
- Clarification on the allocation of future payments due to the credit of the CETF (Chapter 514B, HRS);
- Housekeeping changes so that all statutory references are to the "Condominium Education Trust Fund" (Chapter 514B, HRS); and
- Other conforming amendments.

The recommended changes to Senate Bill No. 1107, S.D. 2, and the reasons for the changes are discussed below:

- Page 3, line 7; page 4, line 4; page 5, lines 7 and 19 deletes from the Commission's administrative and investigatory powers "§514A-2 Chapter not exclusive". The Commission respectively recommends that these proposed amendments be amended by removing the brackets and strikethroughs of

section "[514A-2,]" on page 3, line 7; page 4, line 4; and page 5, lines 7 and 19. For condominium projects which have not yet registered with the Commission and which were created before July 1, 2006 (the effective date of the recodified condominium law) where the developer has elected to register the condominium project under the original condominium law; §514A-2, HRS, allows the Commission in the administration of Chapter 514A, HRS, to reference and utilize other provisions of the Hawaii Revised Statutes. For those condominium associations electing to remain governed by the original condominium law, §514A-2, HRS, clarifies that other provisions of the Hawaii Revised Statutes also apply.

- The deletions of the proposed amendments of section "514A-134" on page 3, line 9; page 4, line 6; page 5, lines 9 and 22; page 6, line 8:
 - Remove the brackets and strikethroughs on page 3, line 9 of sections "514A-134,]" and replace with "514A-134."
 - Remove the brackets and strikethroughs on page 4, line 6 of section "514A-134]," and replace with "514A-134."
 - Add brackets and strikethroughs on page 4, lines 6 to section "514A-132" and replace with "[514A-132-or]".
 - Respectively remove the brackets and strikethroughs on page 5, line 9 of sections "~~or 514A-134,]~~", and replace with "514A-134,".

- Remove the brackets and strikethroughs on page 5, line 22 of sections "~~514A-106, 514A-132, or 514A-134~~" and add section 514A-134 in between the underscored section "514A-105" and the underscored section "or 514B-72" to read as follows "514A-105, 514A-134 or 514B-72."
In keeping section 514A-134, HRS, as recommended and described above, §514A -134 continues to make it unlawful, for any association of apartment owners, its officers, directors, or agents to file with the Commission any false, untrue, material misstatement of fact, notice, statement or other documents applicable to any association of apartment owners that elect or have elected to remain governed by the original condominium law;
- On page 11, lines 16-18, recommend deletion of the proposed amendment to add a new subsection (c) of section 514B-71, HRS. The proposed amendment impacts the CETF and will require raising the approved legislative expenditure ceiling to accommodate the increased expenditures relating to the printing of "any" publications produced by the Commission to be made available to individual condominium owners in both printed and electronic formats. Currently, the Commission makes available to condominium owners all of its educational publications via download from its website. In addition quarterly printed copies of the Hawaii Condominium Bulletin are sent to condominium owners via their respective boards.

Annually, printed copies of unofficial versions of the condominium law, Chapter 514A, HRS, and Chapter 514B, HRS, are made available to individual owners in the same manner.

- On page 14, lines 3-5 and lines 8-11, recommend deletion of the proposed amendments to subsection (d) of section 514B-73, HRS. The proposed amendments impact the CETF and will require raising the approved legislative expenditure ceiling for the CETF. The specific fiscal impacts include the necessity of increasing the Commission's position count to accommodate the additional personnel required to perform the accounting as proposed by the amendments.
- Additionally, the proposed amendments on page 14, lines 3-5 and lines 8-11, do not fit squarely with the legislative intent of the condominium education funds. Section 514B-71, HRS, and Section 514A-131, HRS, require the Commission to administer and expend monies from the funds for "educational purposes" which are identically defined in section 514B-71 (a), HRS, and Section 514A-131 (a), HRS, as

... Educational purposes shall include financing or promoting:

- (1) Education and research in the field of condominium management, condominium project registration, and real estate, for the benefit of the public and those required to be registered under this chapter;

(2) The improvement and more efficient administration of associations; and

(3) Expeditious and inexpensive procedures for resolving association disputes.

(b) The commission may use any and all moneys in the condominium education trust fund for purposes consistent with subsection (a).

Educational purpose as defined in sections 514B-71, HRS, and 514B-131, HRS, does not target expenditures for any designated group, e.g., individual condominium owners. The current language recognizes that education of the related parts as specified in sections 514B-71, HRS, and 514B-131, HRS, benefits all necessary parties.

- On page 14, lines 12-13 the Commission recommends deleting the repeal of Chapter 514A, part VIII, Hawaii Revised Statutes and inserting Section 8 of House Bill 956, H.D. 1 as Section 11. The recommended amendment makes it consistent with the recommended changes described herein.

The Real Estate Commission strongly supports the passage of Senate Bill No. 1107, S.D. 2, with the recommended changes and the effective date of July 1, 2009 and requests your favorable consideration.

Thank you for the opportunity to present testimony.



H.I.C.C.O.

HAWAII INDEPENDENT CONDOMINIUM & COOPERATIVE OWNERS
1600 ALA MOANA BLVD. - APT. 3100 - HONOLULU - HAWAII 96815

March 16, 2009

Rep. Robert N. Herkes, Chair
Committee on Consumer Protection
and Commerce

Testimony on SB 1107 SD 2 Relating to Condominiums

Dear Representative Herkes:

Thank you for this opportunity to testify in support of SB 1107 SD2 on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO).

Our organization originally had concerns regarding SB 1107. However, SB 1107 SD 2 provides information that will enable condominium owners and Boards on an annual basis to know how the Condominium Management Education Funds and the Condominium Education Trust Funds derived from condominium owners are being used.

Condominium owners have been concerned about the prior use of these funds, including commingling fees collected from developers with funds collected from owners. Funds received from owners should be used specifically for the education of owners. SB 1107 SD 2 will ensure that information is available in the annual report.

Thank you for your support of SB 1107 SD 2.

Sincerely,



Richard Port, Chair
Legislative Committee

HAWAII COUNCIL OF ASSOCIATIONS
OF APARTMENT OWNERS

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Aiea, Hawaii 96701
Telephone (808) 566-2122

March 13, 2009

Rep. Robert Herkes, Chair
Rep. Glenn Wakai, Vice-Chair
House Committee on Consumer Protection and Commerce

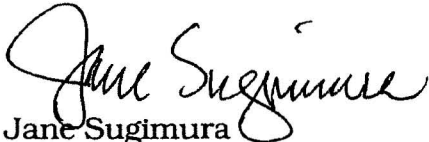
RE: TESTIMONY IN SUPPORT OF SB1107 SD2 RE CONDOMINIUMS
Hearing: Monday, March 16, 2009, 2:15 p.m. Conf. Rm. #325

Chair Herkes, Vice-Chair Wakai and Members of the Committee:

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

HCAAO supports the intent and purpose of the bill, as amended, and urges you to pass it out unamended.

Thank you for the opportunity to testify.



Jane Sugimura
President