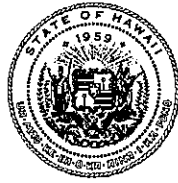


HB1746 HD1

Measure Title: RELATING TO CONDOMINIUMS.
 Report Title: Condominiums; Metering of Utilities
 Description: Applies requirement for separate utility metering of nonresidential and residential condominium units to all condominium projects, regardless of when constructed.
 Companion: [SB2256](#)
 Package: None
 Current Referral: CPN
 Introducer(s): RHOADS, BROWER, ICHIYAMA, LUKE, Saiki

<u>Sort by Date</u>		Status Text
1/13/2012	H	Prefiled
1/18/2012	H	Introduced and Pass First Reading.
1/18/2012	H	Referred to HSG, CPC, referral sheet 1
1/23/2012	H	Bill scheduled to be heard by HSG on Wednesday, 01-25-12 9:20AM in House conference room 325.
1/25/2012	H	The committee(s) on HSG recommend(s) that the measure be deferred.
1/30/2012	H	Bill scheduled for decision making on Wednesday, 02-01-12 10:30AM in conference room 325.
2/1/2012	H	The committees on HSG recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 6 Ayes: Representative(s) Cabanilla, Ito, Chang, Herkes, Nakashima; Ayes with reservations: Representative(s) Har; Noes: none; and 5 Excused: Representative(s) Carroll, Coffman, Kawakami, Pine, Thielen.
2/10/2012	H	Reported from HSG (Stand. Com. Rep. No. 264-12) as amended in HD 1, recommending passage on Second Reading and referral to CPC.
2/10/2012	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on CPC with Representative(s) Har voting aye with reservations; none voting no (0) and Representative(s) C. Lee, M. Lee excused (2).

2/10/2012	H	Bill scheduled to be heard by CPC on Wednesday, 02-15-12 2:00PM in House conference room 325.
2/15/2012	H	The committees on CPC recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 12 Ayes: Representative(s) Herkes, Yamane, Carroll, Coffman, Ito, Keith-Agaran, Luke, Souki, Tsuji, Ching, Marumoto, Thielen; Ayes with reservations: none; Noes: none; and 3 Excused: Representative(s) Brower, Cabanilla, McKelvey.
3/1/2012	H	Reported from CPC (Stand. Com. Rep. No. 666-12), recommending passage on Third Reading.
3/1/2012	H	Passed Third Reading with Representative(s) Har voting aye with reservations; none voting no (0) and Representative(s) Herkes excused (1). Transmitted to Senate.
3/2/2012	S	Received from House (Hse. Com. No. 24).
3/2/2012	S	Passed First Reading.
3/8/2012	S	Referred to CPN.
3/14/2012	S	The committee(s) on CPN has scheduled a public hearing on 03-28-12 9:30AM in conference room 229.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

KEALI'I S. LOPEZ
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TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

WEDNESDAY, MARCH 28, 2012
9:30 A.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE

HOUSE BILL NO. 1746, H.D. 1 - RELATING TO CONDOMINIUMS

DESCRIPTION:

This measure proposes to allow condominium boards to authorize the installation of separate utility meters, notwithstanding the provisions of a project's declaration or an association's bylaws, provided that the association pays the cost of installing the meters.

POSITION:

The Consumer Advocate supports House Bill No. 1746, H.D. 1.

COMMENTS:

Hawaii's consumers pay billions of dollars each year for electricity that is generated using imported oil. Energy conservation and efficiency are important means

House Bill No. 1746, H.D. 1
Senate Committee on Commerce and Consumer Protection
Wednesday, March 28, 2012, 9:30 a.m.
Page 2

by which the State of Hawaii can wean itself from its dependence upon imported petroleum.

The Consumer Advocate supports this measure as it has the potential to make the actual consumer of the electricity used in condominium apartments financially responsible for his own energy usage. There are a number of older condominiums in Hawaii whose apartments are not separately metered. Allowing the board of directors of those condominiums the ability to require separate metering in spite of condominium by-laws and declarations that often make such a change difficult, if not impossible, would be an important step in improving energy conservation.

Furthermore, this bill provides that the cost of installing separate meters to condominium apartments will be borne by the association, not the electric utility. This means that all electric utility ratepayers will not be subsidizing these costs.

H.B. No. 1746, H.D. 1 deletes the phrase "the construction of which commences after December 31, 1977" from the proposed Hawaii Revised Statutes Section 514A-15.5(a). The House version of this bill is therefore much more inclusive than the Senate version that would not apply to mixed use apartments whose construction commenced prior to January 1, 1978. The Consumer Advocate supports both versions of this bill, with a strong preference for H.B. No. 1746, H.D. 1.

Thank you for this opportunity to testify.

21 March 2012

Mr. Clifton T. Johnson
President, Board of Directors
Wailana at Waikiki
1860 Ala Moana Blvd
Phone: 808-741-8632
E-Mail: johnsonc@apcss.org

To: Committee on Commerce and Consumer Protection

Re: Support of HB 1746 HD1 Relating to Condominiums

I hereby submit the following as my testimony both personally and as President of the Board of Directors for the Wailana at Waikiki, in support of HB 1746 HD1.

FACT: Utility costs continue to rise.

FACT: Condo Associations are suffering hugely by these rising costs.

FACT: Many condo owners are penalized by rising maintenance fees when many of them are energy conscientious.

FACT: There is no incentive or reason for condo owners to work to conserve energy when they pay a maintenance fee that covers everything

FACT: Oahu is growing, and electrical power and consumption demands continue to rise. Costs for this growth are passed to consumers via rate increases.

FACT: Renters in condos have absolutely no incentive to conserve energy if they do not pay for their electricity or other utilities.

RECOMMENDATION: For the betterment of our state, islands, and our resident, allowing Condo Associations to implement sub metering, regardless of the age of the building, is only prudent in today's day and age.

I have lived at Wailana at Waikiki for almost 7 years now. Our maintenances have risen from about \$600 when I move in to over \$1000 today. The majority of our maintenance fee increase is the result of electric costs – which are rising almost at astounding rates.

I have walked the halls and watched people residents, they leave doors and windows open with AC running; use old appliances; have old AC thermostats; run TV and lights day and night; and have no concern over how much electricity (or other utilities) they use, because it's all covered in their maintenance fees.

Then people like my wife and I buy energy efficient appliances, install CFL lights, and exercise energy conservation – yet I pay the same maintenance fee rate as those who do not exercise energy conservation.

This bill has to do with more than just individual owners paying less or their own costs. This bill will pursue many (thousands) to start being more energy conscientious when they have to pay their own electricity (or other utilities) separately. They will see the costs, feel the individual pain; and be driven to make some changes (for the most part).

Any and all changes also help the environment. The results driven by passing of this bill will enable Condo Associations of which we have many, to start driving energy efficiencies across the island and the state.

The downfall of passing this bill; people who are use to paying one bill will now have to pay two bills. That is the only downfall of this bill that I can see. Some may not be happy, but it is the right thing to do.

//S// CLIFTON T. JOHNSON

ANDERSON LAHNE & FUJISAKI LLP

A Limited Liability Law Partnership

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March 27, 2012

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection

RE: BILL: HB 1746, HD1
DATE: March 28, 2012
TIME: 9:30 a.m.
PLACE: Conference Room 229

Dear Senators Baker and Taniguchi and Members of the Committee:

Thank you for the opportunity to present testimony on H.B. No. 1746, HD1. This testimony is submitted on my behalf as a member of the Hawai'i State Bar Association and as the lawyer for many planned community associations. I believe I am very qualified to testify on this issue. I have twice written the article for the Hawai'i State Bar Association entitled "Community Associations" in its periodic 3 volume publication: Hawaii Real Estate Law Manual Vol. II. I have also written and taught the GRI course for Realtors® in Hawai'i for the Hawai'i Association of Realtors® and for its various statewide boards. During that time, I have served and testified on behalf of the HSBA Subcommittee on Community Associations (part of the Real Property Section) and on the Legislative Action Committee for CAI for which I have also testified. I have been selected by my peers over the last few years as one of the "Best Lawyers in America." I have practiced community association law for more than 30 years in Hawai'i.

Many older Condominium Projects in Hawaii (for which construction commenced before January 1, 1978) were constructed so that a single meter measures the consumption of utilities (*e.g.*, electricity, water, sewer). (See changes made for newer projects in HRS §514B-42.) Thus, in buildings older than 34 years (there are many condos in this category as condos were first permitted by statute in 1961 in Hawai'i) utility costs are not measured by the actual usage of the various owners or occupants of Units in the Project but instead are paid for as a common expense based on each Unit's undivided common interest. That situation is unfair to both owners in the Project and to the Association. If an owner knows that his electric bill will not be increased because of his cavalier usage, he may decide to leave on the air conditioner or the lights when he leaves his Unit. This is a big problem for resort condominiums where visitors simply leave on the air conditioning with the doors open. Thus, the Association inevitably pays a higher electric bill than it would if the individual members had to pay for their own utility use. It is also unfair to other owners because a three bedroom Unit (that generally has a higher undivided

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection
March 27, 2012
Page 2

interest than a studio Unit) will then pay more in electric costs than a studio Unit, regardless of whether either Unit is even occupied or used.

A prior legislature recognized the unfairness of this situation when it enacted “§514B-42 Metering of Utilities,” which provides that all Projects developed after 1978 would have to provide separate meters for utilities or for another fair means of billing utilities in the governing documents of a mixed use (*e.g.*, residential and commercial) Project:

§514B-42 Metering of utilities. (a) Units in a project that includes units designated for both residential and nonresidential use shall have separate meters, or calculations shall be made, or both, as may be practicable, to determine the use by the nonresidential units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage, and the cost of such utilities shall be paid by the owners of the nonresidential units; provided that the apportionment of the charges among owners of nonresidential units shall be done in a fair and equitable manner as set forth in the declaration or bylaws. . . .

Unfortunately, that provision only relates to Projects developed after 1978: “The requirements of this subsection shall not apply to projects for which construction commenced before January 1, 1978.” Condominium projects have been developed in Hawaii since 1961 and thus many Projects cannot benefit from this language. Also, I would ask that the Committee add language to clarify that all condominium associations (mixed use or otherwise) be able to avail themselves of this opportunity.

Modern technology will now permit metering of utilities using computers and wireless internet connections for a reasonable price regardless of the original construction of the Project. There should be no difference in treatment of older Projects with regard to this issue than newer Projects especially given the new reasonably priced technology. This bill will result in significant savings in electricity and water in Hawai`i, an important public policy reason to enact this legislation.

Thank you for the opportunity to submit this testimony. If you have any questions, I can be reached at 697-6006 or by email at jneeley@alf-hawaii.com.

Sincerely,

ANDERSON LAHNE & FUJISAKI LLP
A Limited Liability Law Partnership

/s/ Joyce Y. Neeley

Joyce Y. Neeley

Testimony for House Bill 1746 HD1
CPN Hearing on 3/28/12
Conference Room 229

March 27, 2012

The Honorable Senator Rosalyn H. Baker
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, HI 96813

Chair Baker and Committee Members:

I support the intent of HB 1746 HD1 but would like to recommend an amendment.

At any time, but particularly during these times of soaring fuel costs, allowing condominium Associations to spread the cost of utilities to the individual units irrespective of usage is patently unfair. This bill attempts to correct this egregious situation, but I do not feel it goes far enough.

The assumption that Associations will recognize the inequity to many owners and rush to correct the unfairness is naïve. If you do not force Associations to install sub meters, than many will simply ignore the request and the inequity will continue.

I would like to suggest that the word "may" be changed to "shall" throughout the bill.

Thank you.

Leon Rouse
Honolulu

Charles St. Sure
2499 Kapiolani Boulevard
Honolulu, Hawaii 96826

TESTIMONY TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

House Bill 1746 HD1 Relating to Condominiums, Metering of Utilities

Chair Baker and Committee Members,

This is in support of the intent of HB 1746 with a recommended amendment.

I have worked in the hotel business for forty years, the last twenty with Aston Hotels & Resorts, one of the larger condominium management companies in Hawaii. I have worked with condominium associations and became familiar with many other associations and management companies through colleagues. By the way I am testifying as an individual and I am not associated with any particular organization at this time.

While condominium associations are well intentioned and want to do the best for their particular property, my experience is that unless there is a significant cost/benefit ratio, or unless they are required by statute to act, associations and their managing agents tend to put aside projects such as sub metering. In this particular case I would expect to hear comments such as "We have looked at the technology and don't feel this is the right time to do it." or " We do not feel there is significant savings to the home owner to proceed at this time."

Look at this issue from the association/managing agent perspective: They would have to do a significant amount of research. They would have to listen to a variety of vendors. They would have to revise their accounting relative to maintenance charges separating out common area utilities charges from the individual units and may feel they need additional labor for this. They would eventually determine that the effort involved does not justify what they will consider a minimal savings. In short, not worth the trouble.

The fairness issue stated in the preamble of this bill would not be a significant consideration. The impact of this legislation on our carbon footprint would most likely be the farthest thing from their mind.

As currently written this measure should not be a bill; this measure should be as resolution as that is how it will be viewed. It is a nice idea that the Legislature is putting forward, but in the end the measure will be ignored by the majority of associations and their managing agents.

SUGGESTED AMENDMENT: Let's put some teeth into this bill. Large condominiums should be required to sub meter individual units. This bill "permits" them to sub meter; associations do not need a legislative measure to "permit" them to sub meter. So what are we accomplishing by passing this bill in its present form?



Wednesday, March 28, 2012

Committee On Commerce and Consumer Protection

Sen. Rosalyn Baker, Chair

Sen. Brian Taniguchi, Vice Chair

Brian Grayling

General Manager, Harbor Square AOA

700 Richards St. #2610

Honolulu, HI 96813

(808) 291-8761

Testimony For HB1746

Members of the Committee On Commerce and Consumer Protection:

Thank you for this opportunity to testify in favor of this Bill.

This energy bill has generated a great deal of interest as it moves through the legislature, and my office has fielded informational calls from Condominium Board Presidents and Managers on both Oahu and Maui. Channel 4 made it their lead story.

The reason for the interest is that Hawaii is facing an energy shortage. Over the past year we have all seen higher utility costs, a matter serious enough for HECO to air recent commercials asking for conservation. Brownouts on all islands have become common. Meanwhile, housing development continues, and prognosis is that immediate future supply will not be able to keep up with demand. This Bill targets waste in residential condominiums, whose owners have faced massive increases in maintenance fees as a result of up to 40% higher energy costs over the last twelve months. If a Board of a high-rise complex chooses to sub-meter, individual residents will become accountable for the energy they use. On inception, a typical high-rise will see its electrical demand reduced by 2-5%, leaving that much more electrical energy available to everybody from businesses to single family homes. We are all pulling from the same source, and there's only so much power to go around.

Thank you for your attention.

Brian Grayling

Testimony for CPN 3/28/2012 9:30:00 AM HB1746

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: Ted Walkey
Organization: Individual
E-mail: tedwalkey@hmcmt.com
Submitted on: 3/20/2012

Comments:

RE: HB 1746/SB2256

As a community association manager, I support the intent of 1746/SB2256 as long as it is made clear that if submeters are to be installed, they must be installed on all units. The purpose of this clarification is to prevent a Board of Directors from singling out one owner who may be using an excessive amount of resources.

Testimony for CPN 3/28/2012 9:30:00 AM HB1746

Conference room: 229

Testifier position: Support

Testifier will be present: No

Submitted by: Ted Walkey

Organization: Individual

E-mail: twalkey@clearwire.net

Submitted on: 3/26/2012

Comments: