

LATE TESTIMONY

Wednesday, March 28, 2012

House Committee on Consumer Protection & Commerce

Rep. Robert Herkes, Chair

Rep. Ryan Yamane, Vice Chair

Brian Grayling

General Manager, Harbor Square AOA

700 Richards St. #2610

Honolulu, HI 96813

(808) 629-9499

Testimony For SB2256 HD1

Members of the Consumer Protection & Commerce Committee:

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

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, 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.

What will this retrofit cost a typical Association? Figures suggest \$200-\$500 per residential apartment. Payback would be less than a year, an excellent business proposition that benefits everybody and extends into future years.

This Bill has the potential of giving oil energy back to the State in the immediate future. It is fair, and allows condominium owners to regulate their own energy expenses.

Thank you for your attention.

Brian Grayling

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ANDERSON LAHNE & FUJISAKI LLP A Limited Liability Law Partnership

733 Bishop Street, Suite 2301
Honolulu, Hawai'i 96813
Telephone: (808) 536-8177
Facsimile: (808) 536-4977

Of Counsel
Joyce Y. Neeley

M. Anne Anderson
Philip L. Lahne
Lance S. Fujisaki

Pamela J. Schell
Randall K. Sing
Jana M. Naruse
Jennifer B. Lyons
Mark W. Gibson

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Representative Robert N. Herkes, Chair
Representative Ryan I. Yamane, Vice Chair
Committee on Consumer Protection & Commerce

RE: BILL: S.B. No. 2256, HD1
DATE: March 29, 2012
TIME: 3:35 p.m.
PLACE: Conference Room 325

Dear Representatives Herkes and Yamane and Members of the Committee:

Thank you for the opportunity to present testimony on S.B. No. 2256, 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

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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 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.

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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