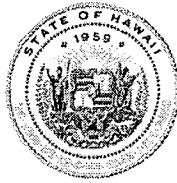


# SB 1368

Measure Title: RELATING TO CONDOMINIUMS.  
Report Title: Condominiums; Real Estate Commission; Enforcement Action  
Description: Permits the real estate commission to ensure compliance by enforcing any rule, order, decision, demand, or requirement of the commission issued pursuant to chapter 514B, Hawaii Revised Statutes.  
Companion:  
Package: None  
Current Referral: CPN, JDL  
Introducer(s): BAKER, Galuteria, Keith-Agaran, Nishihara, Ruderman, Taniguchi, Wakai

<u>Sort by</u> <u>Date</u>		<b>Status Text</b>
1/24/2013	S	Introduced.
1/28/2013	S	Passed First Reading.
1/28/2013	S	Referred to CPN, JDL.
1/29/2013	S	The committee(s) on CPN has scheduled a public hearing on 02-05-13 8:30AM in conference room 229.



NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

**STATE OF HAWAII  
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DIRECTOR

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DEPUTY DIRECTOR

**PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE**

**TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-SEVENTH STATE LEGISLATURE  
REGULAR SESSION, 2013**

**TUESDAY, FEBRUARY 5, 2013  
8:30 A.M.**

**TESTIMONY ON SENATE BILL NO. 1368  
RELATING TO CONDOMINIUMS**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND TO THE HONORABLE BRICKWOOD GALUTERIA, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 1368, Relating To Condominiums. My name is Daria Loy-Goto. I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following testimony in opposition to the bill.

Senate Bill No. 1368 amends Chapter 514B, Hawaii Revised Statutes ("HRS") to authorize the Real Estate Commission ("Commission") to take enforcement action to ensure compliance whenever a person has violated or failed

to comply with a rule, order, decision, demand, or requirement of the Commission issued pursuant to the Chapter. The bill may expand the Commission's jurisdiction over selected parts and provisions in Chapter 514B, HRS, to include oversight and enforcement of the entire Chapter.

RICO opposes Senate Bill No. 1368 for the following reasons:

(1) Many sections within Chapter 514B, HRS, reflect the Legislature's long-standing intent to provide that condominiums are self-governing, existing and operating without government oversight except in specific circumstances. This policy was in place both prior to and after the 2005 recodification of the condominium laws. As such, the Commission's role and scope of authority are carefully identified, as evidenced in §§514B-61(b) and (c), 514B-66, 514B-68, and 514B-69, HRS. If the bill seeks to expand the Commission's enforcement authority, Senate Bill No. 1368 would fundamentally alter the scope of the Commission's jurisdiction. RICO believes such a critical change would require more extensive review and input from affected parties.

(2) If the intent of the bill is to expand enforcement, Senate Bill 1368 would create internal inconsistencies between the new sections and existing provisions. For example, the bill's amendment to subsection (a) of §514B-61, HRS, conflicts with subsection (b) of §514B-61, HRS, which restricts the Commission's enforcement powers to certain parts and sections of the Chapter. Similar inconsistencies exist between the Commission's expanded authority under Senate

Testimony on Senate Bill No. 1368  
February 5, 2013  
Page 3

Bill No. 1368 and the Commission's more limited enforcement powers under §§514B-65 (investigative powers), 514B-66 (cease and desist orders), 514B-68 (power to enjoin), and 514B-69 (penalties), HRS. These statutory inconsistencies cause confusion and would pose problems with enforcement of the bill.

(3) Expanding the Commission's enforcement authority would significantly increase the volume of complaints that could be filed and broaden the scope of those complaints. As a result, associated enforcement costs would rise substantially.

Thank you for this opportunity to testify on Senate Bill No. 1368. I will be happy to answer any questions that the members of the Committee may have.

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

**TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2013**

**Tuesday, February 5, 2013  
8:30 a.m.**

**TESTIMONY ON SENATE BILL NO. 1368, RELATING TO CONDOMINIUMS.**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

My name is Nikki Senter and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony on Senate Bill No. 1368, Relating to Condominiums. Senate Bill No. 1368 permits the Real Estate Commission to ensure compliance by enforcing any rule, order, decision, demand, or requirement of the Commission issued pursuant to Chapter 514B, Hawaii Revised Statutes. The Commission believes Senate Bill No. 1368 is unnecessary and opposes the bill for the following reasons:

- The Commission is unsure of the intent and purpose of this bill;
- Pursuant to section 26-9 (m), and 26-9 (h), HRS, the Commission, through delegated authority from the Department of Commerce and Consumer Affairs and its enforcement officer (Regulated Industries Complaints Office), has a complaint and enforcement process in place for those provisions enumerated in sections 514B-67 and 514B-68, HRS;
- The Commission is unsure as to what is meant by the proposed language "to ensure compliance with this chapter" on page 1 line 14, and on page 2

line 10. The proposed language appears vague and ambiguous.

- The Commission's Chapter 514B, HRS, jurisdiction is basically limited to the administration and registration of condominium projects and **select portions** of Part VI of Chapter 514B "Management of Condominiums." Is it the intent of the proposed language on page 1 line 14 and on page 2 line 10 "to ensure compliance with this chapter" to expand the Commission's jurisdiction to all of Chapter 514B, including all of Part VI "Management of Condominiums?" Any expansion of the Commission's jurisdiction would require increased funding through a substantial increase of the developer's and the condominium unit owners' contribution to the Condominium Education Trust Fund. Additionally, does the proposed language intend that the Commission supervise the daily operations of a developer, an association, its board, and its owners to oversee compliance with Chapter 514B? What does it mean "to ensure compliance with this chapter?"
- Finally, the review provisions proposed on page 1 lines 14-18 appear unnecessary. A "within thirty day" review provision is currently established pursuant to section 91-14, HRS, "Judicial Review of Contested Cases."

On the other hand, if the intent of Senate Bill No. 1368 is to expand the Commission's jurisdiction to every provision of Chapter 514B, HRS, and clothe the Commission with immunity from any and all liability arising out of any of its demands for

Testimony on Senate Bill No. 1368  
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the compliance (without resort first to due process) of any developer, association, board member, unit owner, such a change in public policy would only be responsibly implemented subject to receipt of the necessary funding for such implementation.

For the reasons discussed, the Commission opposes Senate Bill No. 1368.

Thank you for the opportunity to testify.



P.O. Box 976  
Honolulu, Hawaii 96808

February 3, 2013

Honorable Rosalyn H. Baker  
Honorable Brickwood Galuteria  
Commerce and Consumer Protection  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **SB 1368/OPPOSE**

Dear Chair Baker, Vice-Chair Galuteria and Committee Members:

I Chair the CAI Legislative Action Committee. CAI opposes SB1368.

The Real Estate Commission ("REC") has broad powers pursuant to Hawaii Revised Statutes Sections 514B-65 (investigative powers), 66 (cease and desist orders), 67 (termination of registration) and 68 (power to enjoin). The need for this bill is, therefore, unclear.

SB 1368 is overbroad and vague. SB 1368 also omits meaningful due process protection. For example, it is useful to contrast SB 1368 with Section 514B-66, which is reprinted below:

[§514B-66] Cease and desist orders. In addition to its authority under sections 514B-67 and 514B-68, whenever the commission has reason to believe that any person is violating or has violated this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, or the rules of the commission adopted pursuant thereto, it may issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day at least thirty days after the service of the complaint. The person served has the right to appear at the place and time specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law or rules charged in the complaint. If the commission finds that this chapter or the rules of the commission have been or are being violated, it shall make a report in writing stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court. (Emphasis added)

SB 1368 omits similar due process provisions.



Honorable Rosalyn H. Baker  
Honorable Brickwood Galuteria  
February 3, 2013  
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SB 1368 provides that "whenever the commission has reason to believe" a violation exists "the commission may take whatever enforcement action is necessary to ensure compliance with this chapter." It appears from the bill, and in contrast with 514B-66, for example, that the commission may act without notice and without providing an opportunity to be heard.

Due process is a fundamental constitutional right. Notice and an opportunity to be heard are basic elements of due process.

CAI could be supportive of a narrowly tailored solution to a demonstrated real-world problem that is not already addressed by existing law; provided that:

- 1) meaningful notice and opportunity to be heard are included; and
- 2) "whatever enforcement action is necessary" is reworked to particularly describe reasonable enforcement actions that might be considered.

Very truly yours,

*Philip Nerney*

Philip Nerney

**SB1368**

Submitted on: 2/2/2013

Testimony for CPN on Feb 5, 2013 08:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eric Matsumoto	Individual	Oppose	No

Comments: The REC alrerady has poweres to enforce violations. To impose the provisins of this bill would deny due process for those in violation. Request this bill be held.