

JAN 17 2014

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that a large percentage
2 of persons in Hawaii live in condominiums and are members of
3 their condominium unit owners' association. The legislature
4 also finds that many condominium projects are akin to small
5 communities, and each unit owner has interests and goals for the
6 improvement of the condominium project. The legislature
7 believes that the boards of directors of these associations have
8 a duty to make their management decisions as transparent as
9 possible so that members are fully aware of the basis for those
10 decisions and their implications.

11 The purpose of this Act is to encourage more transparency
12 in the actions of condominium association boards of directors
13 by:

14 (1) Requiring board members and managing agents to
15 disclose conflicts of interest that they may have with
16 bidders on contracts; and

17 (2) Increasing the enforcement powers of the real estate
18 commission, and requiring the commission to make an



1 annual report of complaints against condominium boards
2 and the number and type of enforcement actions taken
3 by the commission.

4 SECTION 2. Chapter 514A, Hawaii Revised Statutes, is
5 amended by adding two new sections to be appropriately
6 designated and to read as follows:

7 "§514A-A Board; disclosure of conflict of interests.

8 Prior to the awarding of any contract with a value of \$200,000
9 or more, any member of the board or any person retained to
10 manage the property who has a potential conflict of interest
11 with any bidder on the contract shall disclose that conflict of
12 interest to the other members of the board and the owners of the
13 units in the condominium.

14 For the purposes of this section, "conflict of interest"
15 shall have the same meaning as in section 514B-125(f).

16 §514A-B Annual report. The commission shall submit an
17 annual report to the legislature containing:

- 18 (1) The number and nature of complaints received by the
19 commission relating to violations of this chapter; and
20 (2) Actions taken by the commission pursuant to sections
21 514A-46, 514A-47, 514A-48, and 514A-49."



1 SECTION 3. Section 514A-46, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§514A-46 Investigatory powers.** If the commission has
4 reason to believe that any person is violating or has violated
5 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
6 514A-67, 514A-68, 514A-70, 514A-A, 514A-83.5, 514A-84, 514A-85,
7 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-134, or 514B-72, or
8 the rules of the commission adopted pursuant thereto, the
9 commission may conduct an investigation of the matter and
10 examine the books, accounts, contracts, records, and files of
11 the association of apartment owners, the board of directors, the
12 managing agent, the real estate broker, the real estate
13 salesperson, the purchaser, or the developer. For the purposes
14 of this examination, the developer and the real estate broker
15 shall keep and maintain records of all sales transactions and of
16 the funds received by the developer and the real estate broker
17 pursuant thereto, and shall make the records accessible to the
18 commission upon reasonable notice and demand."

19 SECTION 4. Section 514A-47, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§514A-47 Cease and desist orders.** In addition to its
22 authority under section 514A-48, whenever the commission has



1 reason to believe that any person is violating or has violated
2 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
3 514A-67, 514A-68, 514A-70, 514A-A, 514A-83.5, 514A-84, 514A-85,
4 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-134, or 514B-72, or
5 the rules of the commission adopted pursuant thereto, it shall
6 issue and serve upon the person a complaint stating its charges
7 in that respect and containing a notice of a hearing at a stated
8 place and upon a day at least thirty days after the service of
9 the complaint. The person served has the right to appear at the
10 place and time specified and show cause why an order should not
11 be entered by the commission requiring the person to cease and
12 desist from the violation of the law or the rules of the
13 commission charged in the complaint. If, upon the hearing, the
14 commission is of the opinion that this chapter or the rules of
15 the commission have been or are being violated, it shall make a
16 report in writing stating its findings as to the facts and shall
17 issue and cause to be served on the person an order requiring
18 the person to cease and desist from the violations. The person,
19 within thirty days after service upon the person of the report
20 or order, may obtain a review thereof in the appropriate circuit
21 court."



1 SECTION 5. Section 514A-48, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§514A-48 Power to enjoin. Whenever the commission
4 believes from satisfactory evidence that any person has violated
5 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
6 514A-67, 514A-68, 514A-70, 514A-A, 514A-83.5, 514A-84, 514A-85,
7 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-134, or 514B-72, or
8 the rules of the commission adopted pursuant thereto, it may
9 conduct an investigation on the matter and bring an action in
10 the name of the people of the State in any court of competent
11 jurisdiction against the person to enjoin the person from
12 continuing the violation or engaging therein or doing any act or
13 acts in furtherance thereof.

14 The commission may also recover attorneys' fees."

15 SECTION 6. Section 514A-49, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) Any person who violates or fails to comply with
18 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
19 514A-67, 514A-68, 514A-70, 514A-A, 514A-83.5, 514A-84, 514A-85,
20 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-105,
21 514A-134, or 514B-72 is guilty of a misdemeanor and shall be
22 punished by a fine not exceeding \$10,000 or by imprisonment for



1 a term not exceeding one year, or both. Any person who violates
 2 or fails, omits, or neglects to obey, observe, or comply with
 3 any rule, order, decision, demand, or requirement of the
 4 commission under section 514A-31 to 514A-49, 514A-61 to 514A-63,
 5 514A-65, 514A-67, 514A-68, 514A-70, 514A-A, 514A-83.5, 514A-84,
 6 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to
 7 [~~+~~]514A-105[~~+~~], or 514B-72 shall be punished by a fine not
 8 exceeding \$10,000."

9 SECTION 7. Chapter 514B, Hawaii Revised Statutes, is
 10 amended by adding two new sections be appropriately designated
 11 and to read as follows:

12 "§514B-A Board; disclosure of conflict of interest. Prior
 13 to the awarding of any contract with a value of \$200,000 or
 14 more, any member of the board or any managing agent who has a
 15 potential conflict of interest with any bidder on the contract
 16 shall disclose that conflict of interest to the other members of
 17 the board and the owners of the units in the condominium.

18 For the purposes of this section, "conflict of interest"
 19 shall have the same meaning as in section 514B-125(f).

20 §514B-B Enforcement. (a) Whenever the commission finds,
 21 based upon satisfactory evidence, that any person is violating
 22 or has violated any provision of this chapter or rule of the



1 commission adopted pursuant thereto, the commission may conduct
2 an investigation of the matter and bring an action in the name
3 of the commission in any court of competent jurisdiction against
4 the person to enjoin the person from continuing the violation or
5 doing any acts in furtherance thereof. The commission shall
6 also be entitled to recover attorneys' fees.

7 (b) Before the commission brings an action, pursuant to
8 subsection (a), in any court of competent jurisdiction against
9 any member of the board or managing agent, it may consider
10 whether the extenuating circumstances affected the person's
11 ability to comply with the law. If the commission finds that
12 extenuating circumstances exist, the commission may cease any
13 further action.

14 (c) The commission shall adopt rules, pursuant to chapter
15 91, to carry out the purposes of this part.

16 (d) The commission shall submit an annual report to the
17 legislature on the number of complaints, investigations, and
18 enforcement actions brought under this part."

19 SECTION 8. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



S.B. NO. 2363

1 SECTION 9. In codifying the new sections added by sections
2 2 and 7 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 10. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 11. This Act shall take effect upon its approval.

8

INTRODUCED BY: 



S.B. NO. 2363

Report Title:

Condominiums; Transparency

Description:

Requires condominium board members and managing agents to disclose potential conflicts of interest in the awarding of contracts. Requires annual report on complaints and enforcement actions. Grants the real estate commission enforcement powers over issues relating to the management of condominiums.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

