

SB2078 SD1

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Condominium Projects; Agricultural Uses and Activities

Description: Clarifies the applicability of section 205-4.6, HRS, relating to private restrictions on agricultural uses and activities, to condominium projects on lands classified as agricultural. (SD1)

Companion: [HB2017](#)

Package: None

Current Referral: AGL, CPN

Introducer(s): BAKER, SOLOMON, L. THIELEN, Espero, Galuteria, Ige, Kidani, Nishihara, Taniguchi, Wakai



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON COMMERCE AND CONSUMER
PROTECTION
FRIDAY, FEBRUARY 21, 2014
10:30 A.M.
Room 229

SENATE BILL NO. 2078, SENATE DRAFT 1
RELATING TO CONDOMINIUMS

Chairperson Baker and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2078, Senate Draft 1. The Department of Agriculture supports this measure that clarifies that Section 205-4.6, Hawaii Revised Statutes does not allow private restrictions to be placed on agricultural uses and activities on agricultural condominium properties. Since the enactment of this law in 2003, we have received complaints from occupants of agricultural condominiums seeking to grow crops but facing restrictions on their agricultural activities, including limitations on the days and times they may use farming equipment, limitations on the height and type of vegetation used for windbreaks, and restrictions on crop types. The Department of Agriculture strongly supports and promotes agricultural production on all agricultural lands, particularly on agricultural subdivisions and condominiums.

Thank you, again, for the opportunity to testify on this measure.



**PRESENTATION OF THE
REAL ESTATE COMMISSION**

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

**TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014**

**Friday, February 21, 2014
10:30 a.m.**

COMMENTS ON SENATE BILL NO. 2078, S.D. 1, RELATING TO CONDOMINIUMS.

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

My name is Scott Sherley and I am the Condominium Review Committee Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present comments on Senate Bill No. 2078, S.D. 1, Relating to Condominiums. Senate Bill No. 2078, S.D. 1, clarifies the applicability of section 205-4.6, HRS, relating to private restrictions on agricultural uses and activities, to condominium projects on lands classified as agricultural. The Commission supports Senate Bill No. 2078, S.D. 1, for the following reasons.

Condominiums may be created on lands located in an agricultural classified district. Pursuant to the condominium law, section 514B-84 (b) (1), HRS, a developer creating such a condominium shall disclose to prospective purchasers among other information as follows:

- (1) Whether the structures and uses anticipated by the developer's promotional plan for the project are in compliance with all applicable state and county land use laws;

(2) Whether the structures and uses anticipated by the developer's promotional plan for the project are in compliance with all applicable county real property tax laws, and the penalties for noncompliance; and

(3) Other disclosures and information that the commission may require.

Such disclosures are apparently intended to provide prospective purchasers relevant information relating to whether the prospective purchaser's consumer expectations may be met by purchasing a unit.


Specifically, Senate Bill No. 2078, S.D. 1, appears to provide some additional consumer protective measures towards these ends as follows:


- Requires a developer to include in a declaration creating a new or converted condominium property regime that there are no restrictions or prohibitions disallowing any prospective purchaser from engaging in agricultural uses and activities as defined in sections 205-2 (d) and 205-4.5 (a), HRS;
- Requires a developer to obtain a verified statement signed by an appropriate county official, that the project as described and set forth in the project's declaration, condominium map, bylaws, and house rules does not include any restrictions limiting or prohibiting agricultural uses or activities, in compliance with section 205-4.6, HRS;
- Requires a developer to submit to the Commission as part of the developer's application to register the project the verified statement;


- Allows the Commission to decline to register an agricultural condominium project if the developer does not submit the required statement;
- Allows the Commission to decline to issue an effective date for a developer prepared public report to be used to sell units in the project where the developer has not submitted the required county statement;
- Permits the Commission after notice and a hearing to terminate the registration of a condominium project after a determination that a developer, or any officer, principal, or affiliate of a developer has failed to conform or comply with county zoning and development ordinances as required by chapter 205, including section 205-4.6 where applicable, and section 514B-5, HRS.

For the reasons discussed, the Commission supports Senate Bill No. 2078, S.D. 1. Thank you for the opportunity to offer comments.



 | 808-733-7060

 | 1259 A'ala Street, Suite 300
Honolulu, HI 96817

 | 808-737-4977

February 21, 2014

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce and Consumer Protection

State Capitol, Room 229

Honolulu, Hawaii 96813

RE: S.B. 2078, S.D.1, Relating to Condominiums

HEARING: Friday, February 21, 2014 at 10:30 a.m.

Aloha Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, submitting testimony on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,300 members. HAR **supports the intent** of S.B. 2078, S.D.1, which clarifies the applicability of section 205-4.6, Hawaii Revised Statutes ("HRS"), relating to private restrictions on agricultural uses and activities, to condominiums projects on lands classified as agricultural.

This measure provides for an owner to farm on their property and accomplishes that by amending HRS §205-4.6 to protect uses and activities on agricultural lands through prohibiting any restrictions by private agreement contained in any condominium declaration, map, bylaws, and other documents.

HAR further believes that consumers may be better informed by disclosing in the condominium developer's public report that there are no restrictions or prohibitions disallowing a potential purchaser from engaging in farming as defined in HRS §205.

Mahalo for the opportunity to offer written testimony.

