

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 28, 2014 9:43 PM
To: CPN Testimony
Cc: john-a-morris@juno.com
Subject: Submitted testimony for SB2363 on Jan 29, 2014 09:00AM

SB2363

Submitted on: 1/28/2014

Testimony for CPN on Jan 29, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
John Morris	Individual	Comments Only	No

Comments: 888 Mililani Street Second Floor Honolulu ph 599 7226 My name is John Morris and I am testifying to express concerns about some of the provisions of SB 2363. I work as an attorney representing condominium and other homeowner associations. Section 514A-A proposes to add a new section requiring board members to disclose conflicts of interest prior to awarding any contract with a value of \$200,000 and more. The current law, section 514B-125 (f) already requires a director to disclose all conflicts of interest. Therefore, this proposed addition to the condominium law seems to reduce the obligations of a director and give the false impression that conflicts involving contracts with the value of less than \$200,000 do not require disclosure prior to a vote. Moreover, to the extent of the section would apply to agents managing the property, section 514B-132 (c) already imposes a fiduciary duty on managing agents. Therefore, requiring them to disclose conflicts of interest seems to be superfluous because the managing agent's fiduciary duty would require the disclosure of conflicts of interest anyway. In addition, managing agents are already subject to the provisions of chapter 467, HRS, because every managing agent must have a broker's license. Therefore, the requirements of chapter 467 also control the conduct of a managing agent. Section 514A-B may serve a purpose if the benefits of collecting the information on owner complaints justify the burden on the real estate commission in collecting the information. I served as the first condominium specialist with the real estate commission from 1988 to 1991 and am familiar with the process by which the complaints would be collected and processed under this bill. Often the complaints are not verified. Moreover, the complaints are often just brief questions that may require considerable effort to categorize for the report required under this section. Therefore, it is not clear whether the benefits would justify the burdens. Sections 3 through 6 of the bill propose to amend the existing laws to authorize the real estate commission to enforce section 514A-A relating to conflicts of interest. When I served as the condominium specialist from 1988 to 1991, having the commission enforce the law was the ultimate goal of most people registering complaints with the commission. Unfortunately, that goal overlooks the considerable burden on the commission of investigating the complaints -- a burden that would probably require considerably more staff and resources than the commission currently has at its disposal. (That circumstance is one reason the law has always required that owners self enforce the condominium law, except in very limited circumstances relating to availability of information and financial resources.) In other words, as a state agency, without a thorough investigation, the commission could not lightly undertake action against a board member alleged to have a conflict-of-interest. Such an investigation would require considerable time and effort to meet due process standards, as well as the personnel necessary to undertake the investigation. Even allowing the commission to recover its legal fees for the cost of enforcement would not necessarily fund a

satisfactory state investigation procedure. Section 7 of the bill proposes to implement similar conflict-of-interest and commission investigation procedures in chapter 514B. Again, the conflict-of-interest provision will actually lower the standard that exists at the current time by focusing only on contracts over \$200,000. The burden on the commission under this proposed change would also be similar to the burden outlined above – the work would require considerable more time and staff devoted to the investigation process. Finally, last year, the legislature established procedures to fund qualified, professional mediators so they could assist owners in resolving their own disputes. That process has not been given the opportunity to succeed, since it is still in the process of being established. It seems that rather than creating a whole new procedure for real estate commission enforcement, the resources of the state would be better served by allowing the interested parties to first establish an effective, professional mediation program. Thank you for this opportunity to testify. John Morris

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LATE

From: Merv Ahana <merv@pixi.com>
Sent: Tuesday, January 28, 2014 11:21 PM
To: CPN Testimony
Subject: *****SPAM***** Senate Bill 2363, Condominium Transparency

January 27, 2014

Dear Sirs:

I am an owner of a condominium in the Marco Polo, 2333 Kapiolani Blvd., Honolulu, Hawaii and has been informed of possible instances of conflict of interests between members of our Board of Directors, Management Company and vendors. Present law has made it almost impossible to conduct an inquiry when instances of conflict is suspected.

In 2013, the Hawaii State Data Book notes that Hawaii has 156,846 condominium units. At \$200 per monthly maintenance fee, this amounts to \$31,369,200 and twelve times that amount per year. This large sum with future increases a certainty, stricter oversight is warranted.

Therefore I strongly support Senate Bill 2363. I would like to make/add/change the following:

- 1. If evidence shows a possible conflict, the inquiry should be retroactive for five years.**
- 2. Conflicts of interest of any type, monetary, relationship, etc., no matter how inconsequential, should be reported to the entire Board/Owners immediately, owners be given at least a week for input to the board members, before a full Board votes to either allow/disallow participation of the person/persons of interest. The vote and reasons should be in the minutes of the meeting. The \$200,000 trigger is too simple to circumvent and should be removed from the Bill.**
- 3. Disclosure of past conflicts must be made before serving on any other Condominium Boards.**

4. **Penalty should include reimbursement to the Owners Associations equal to 10% of the funds involved, as well as the \$10,000 and one year incarceration.**
5. **Management companies found associated with any conflict of interest should also be censured and the violation made public. Any additional violations should result in their license be revoked for doing business in Hawaii for at least a year.**

Thankyou for interest in the matter.

Yours very truly,

**Mervin Ahana
Apartment #1106
Marco Polo Condominium
merv@pixi.com**

Barbara
Shedman

SB 2363

The sky above; what
little there is* of it
to see.

↓ left

Pat looks below: the trash
that ends up out
into the sea.

Concrete, graft, greed &
corruption surrounds us

Aw-see! Where did our
Hawaii go?