
A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 PART I

2 SECTION 1. The legislature finds that while self-
3 governance has been successful in the State, there have been
4 abuses as evidenced by the actions of certain condominium
5 boards. The legislature finds that there is a need for a
6 central enforcement body to address the problems faced by many
7 condominium owners who sometimes fear retribution from certain
8 board members when challenging their governance.

9 SECTION 2. Chapter 514B, Hawaii Revised Statutes, is
10 amended by adding a new part to be appropriately designated and
11 to read as follows:

12 "PART . OFFICE OF SELF-GOVERNANCE OVERSIGHT

13 §514B-A Office of self-governance oversight; condominium
14 czar. There is established within the department of the
15 attorney general the office of self-governance oversight. The
16 office of self-governance oversight shall be headed by the
17 condominium czar, who shall be appointed by the attorney general



1 in consultation with the director of commerce and consumer
2 affairs with the approval of the governor. The condominium czar
3 shall have been admitted to practice law before the supreme
4 court of this State and shall have extensive experience in
5 Hawaii real estate and condominium law and in conflict and
6 alternative dispute resolution. The condominium czar shall be
7 exempt from chapter 76.

8 **§514B-B Personnel; salary; benefits.** (a) The condominium
9 czar may appoint as staff members persons who have been admitted
10 to practice law before the supreme court of this State without
11 regard to chapter 76. All other employees shall be appointed by
12 the czar in accordance with chapter 76.

13 (b) The salary of the condominium czar shall be set by the
14 attorney general but shall not be more than the maximum salary
15 of the first deputy to the attorney general. The condominium
16 czar and attorney staff members shall be included in any benefit
17 program generally applicable to the officers and employees of
18 the State.

19 **§514B-C Powers and duties.** The condominium czar shall:

20 (1) Investigate disputes brought by unit owners, pursuant
21 to section 514B-D;



- 1 (2) Make recommendations or give guidance as necessary to
2 assist unit owners;
- 3 (3) Upon request, assist unit owners with processing
4 requests submitted to alternative dispute resolution
5 pursuant to part VI, subpart D;
- 6 (4) In conjunction with the commission and via moneys in
7 the condominium education trust fund, educate the
8 public and those required to be registered under this
9 chapter;
- 10 (5) Publish advisory opinions upon request from unit
11 owners;
- 12 (6) Determine the unit owner's financial need to qualify
13 for services;
- 14 (7) Upon request, submit an action according to section
15 514B-111 to amend a provision in the governing
16 documents if the condominium czar determines that the
17 provision is obsolete, antiquated, or moot; and
- 18 (8) Adopt rules in accordance with chapter 91 necessary to
19 carry out the purposes of this part.

20 **§514B-D Request for dispute intervention; intervention**
21 **affidavit.** (a) Except as otherwise provided in this section, a



1 unit owner who is party to a dispute involving the
2 interpretation or enforcement of an association's declaration,
3 bylaws, or house rules may file with the office of self-
4 governance oversight a written request for dispute intervention.
5 The written request shall be in the form of an affidavit that
6 sets forth the facts constituting the dispute and information
7 regarding a financial need to qualify for services.

8 (b) The condominium czar shall determine the financial
9 hardship standards necessary to qualify for services through
10 rules adopted pursuant to chapter 91.

11 (c) Prior to submission of an intervention affidavit, a
12 unit owner shall provide the association or board with written
13 notice of the dispute as set forth in the intervention
14 affidavit. The notice shall be sent by means of certified mail,
15 return receipt requested and deliver to addressee only. The
16 notice shall specify, in reasonable detail:

- 17 (1) The dispute;
- 18 (2) Any alleged damages that resulted from the dispute;
- 19 and
- 20 (3) Any proposed corrective action to resolve the dispute.



1 (d) An intervention affidavit filed with the office of
2 self-governance oversight pursuant to this section shall be on a
3 form prescribed by the office and be accompanied by evidence
4 that:

5 (1) The respondent has been given a reasonable
6 opportunity, after receiving the written notice, to
7 correct the dispute; and

8 (2) Reasonable efforts to resolve the dispute have failed.

9 (e) The commission may impose a fine of not more than
10 \$1,000 against any person who knowingly files a false or
11 fraudulent intervention affidavit with the office of self-
12 governance oversight.

13 (f) A written request for dispute intervention under
14 subsection (a) may not be filed by any unit owner who is
15 currently serving as a member of a board.

16 **§514B-E Investigation by condominium czar; dispute**
17 **resolution assistance.** (a) Upon receipt of an intervention
18 affidavit pursuant to section 514B-D, the condominium czar shall
19 open an investigation into the dispute.

20 (b) The condominium czar may interview parties and
21 witnesses involved in the dispute and may request the production



1 of documents, records, and information pursuant to section
2 514B-154.5.

3 (c) The condominium czar shall make recommendations, give
4 guidance, or issue an advisory opinion to the unit owner as the
5 condominium czar deems necessary.

6 (d) If the condominium czar determines an association or
7 board is at fault in a dispute, the association or board shall
8 be responsible for any legal fees incurred or fines levied
9 against the unit owner involved in the dispute.

10 (e) The condominium czar may impose a fine of not more
11 than \$1,000 on the respondent, including the board, other
12 management entities, or both, if the respondent knowingly
13 submits false or fraudulent information in the process of the
14 czar's investigations.

15 (f) If the parties cannot reach an agreement under this
16 section, either party may request participation in a contested
17 case hearing.

18 §514B-G Contested case hearing. (a) A contested case
19 hearing shall be conducted pursuant to chapter 91 and any rules
20 adopted by the office of self-governance oversight, except as
21 provided in this section.



1 (b) If a hearing is held before the office of self-
2 governance oversight, the office of self-governance oversight
3 shall not be bound by strict rules of evidence when conducting a
4 hearing to determine whether a violation of this part has
5 occurred, and the degree or quantum of proof required shall be a
6 preponderance of the evidence.

7 (c) The office of self-governance oversight or hearings
8 officer, if there is no dispute as to the facts involved in a
9 particular matter, may permit the parties to proceed by
10 memoranda of law in lieu of a hearing unless the procedure would
11 unduly burden any party or is otherwise not conducive to the
12 ends of justice.

13 (d) A record shall be made of the proceeding.

14 (e) All parties shall be afforded full opportunity to
15 present evidence and argument on all issues involved.

16 (f) Any person who appears before the office of self-
17 governance oversight shall have all of the rights, privileges,
18 and responsibilities of a witness appearing before the courts of
19 this State. All witnesses summoned before the office of self-
20 governance oversight or hearings officer shall receive
21 reimbursements as paid in like circumstances in the courts of



1 this State. Any person whose name is mentioned during a
2 proceeding before the office of self-governance oversight and
3 who may be adversely affected thereby may appear or file a
4 written statement for incorporation into the record of the
5 proceeding.

6 (g) If a hearing is held before a hearings officer, the
7 hearings officer shall render a recommended decision for the
8 office of self-governance oversight's consideration. Any party
9 adversely affected by the decision may file written exceptions
10 with the office of self-governance oversight within fifteen days
11 after receipt of a copy of the decision by certified mail.

12 (h) The office of self-governance oversight, as
13 expeditiously as possible after the close of the office of self-
14 governance oversight's hearing, shall issue its final
15 determination of violation together with separate findings of
16 fact and conclusions of law regarding whether a violation of
17 this part has been committed.

18 §514B-G Fines or fees. Any fine or fee collected pursuant
19 to this part shall be deposited into the office of self-
20 governance oversight special fund established pursuant to
21 section 514B-H.



1 §514B-H Office of self-governance oversight special fund.

2 (a) There is established an office of self-governance oversight
3 special fund into which shall be deposited the following moneys:

4 (1) Appropriations by the legislature to the special fund;

5 (2) Gifts, donations, and grants from public agencies and
6 private persons;

7 (3) Administrative penalties, fines, and other charges
8 collected under this chapter or any rule adopted
9 pursuant to this chapter.

10 (b) All interest earned or accrued on moneys deposited in
11 the fund shall become part of the fund.

12 (c) The office of self-governance oversight shall adopt
13 rules in accordance with chapter 91 for the purposes of this
14 section."

15 SECTION 3. Chapter 514B, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§514B- Board member; disclosure; education. (a) Every
19 member of a board shall file annually with the office of self-
20 governance oversight a financial disclosure form as required
21 pursuant to rules adopted by the office of self-governance



1 oversight. The financial disclosure shall be confidential and
2 not open to public inspection.

3 (b) The condominium czar shall establish a condominium
4 education class for new members of a board.

5 (c) Every person chosen to be a new member of a board
6 shall take the condominium education class and obtain a
7 certificate of completion within three months of acceptance to
8 the board."

9 SECTION 4. Section 514B-3, Hawaii Revised Statutes, is
10 amended by adding a new definition to be appropriately inserted
11 and to read as follows:

12 "Condominium czar" means the condominium czar established
13 pursuant to section 514B-A."

14 SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) No department of the State other than the attorney
17 general may employ or retain any attorney, by contract or
18 otherwise, for the purpose of representing the State or the
19 department in any litigation, rendering legal counsel to the
20 department, or drafting legal documents for the department;



1 provided that the foregoing provision shall not apply to the
2 employment or retention of attorneys:

3 (1) By the public utilities commission, the labor and
4 industrial relations appeals board, and the Hawaii
5 labor relations board;

6 (2) By any court or judicial or legislative office of the
7 State; provided that if the attorney general is
8 requested to provide representation to a court or
9 judicial office by the chief justice or the chief
10 justice's designee, or to a legislative office by the
11 speaker of the house of representatives and the
12 president of the senate jointly, and the attorney
13 general declines to provide such representation on the
14 grounds of conflict of interest, the attorney general
15 shall retain an attorney for the court, judicial, or
16 legislative office, subject to approval by the court,
17 judicial, or legislative office;

18 (3) By the legislative reference bureau;

19 (4) By any compilation commission that may be constituted
20 from time to time;



- 1 (5) By the real estate commission for any action involving
2 the real estate recovery fund;
- 3 (6) By the contractors license board for any action
4 involving the contractors recovery fund;
- 5 (7) By the office of Hawaiian affairs;
- 6 (8) By the department of commerce and consumer affairs for
7 the enforcement of violations of chapters 480 and
8 485A;
- 9 (9) As grand jury counsel;
- 10 (10) By the Hawaii health systems corporation, or its
11 regional system boards, or any of their facilities;
- 12 (11) By the auditor;
- 13 (12) By the office of ombudsman;
- 14 (13) By the insurance division;
- 15 (14) By the University of Hawaii;
- 16 (15) By the Kahoolawe island reserve commission;
- 17 (16) By the division of consumer advocacy;
- 18 (17) By the office of elections;
- 19 (18) By the campaign spending commission;
- 20 (19) By the Hawaii tourism authority, as provided in
21 section 201B-2.5;



- 1 (20) By the division of financial institutions for any
2 action involving the mortgage loan recovery fund;
- 3 (21) By the office of information practices; [~~or~~]
- 4 (22) By the office of self-governance oversight; or
- 5 [~~(22)~~] (23) By a department, if the attorney general, for
6 reasons deemed by the attorney general to be good and
7 sufficient, declines to employ or retain an attorney
8 for a department; provided that the governor waives
9 the provision of this section."

10 SECTION 6. Section 514B-22, Hawaii Revised Statutes, is
11 amended to read as follows:

- 12 "§514B-22 Applicability to preexisting condominiums.
13 Sections 514B-4, 514B-5, 514B-35, 514B-41(c), 514B-46, 514B-72,
14 [~~and~~] part VI, part _____, and section 514B-3 to the extent
15 definitions are necessary in construing any of those provisions,
16 and all amendments thereto, apply to all condominiums created in
17 this State before July 1, 2006; provided that those sections:
- 18 (1) Shall apply only with respect to events and
19 circumstances occurring on or after July 1, 2006; and
- 20 (2) Shall not invalidate existing provisions of the
21 declaration, bylaws, condominium map, or other



1 constituent documents of those condominiums if to do
2 ,so would invalidate the reserved rights of a developer
3 or be an unreasonable impairment of contract.

4 For purposes of interpreting this chapter, the terms
5 "condominium property regime" and "horizontal property regime"
6 shall be deemed to correspond to the term "condominium"; the
7 term "apartment" shall be deemed to correspond to the term
8 "unit"; the term "apartment owner" shall be deemed to correspond
9 to the term "unit owner"; and the term "association of apartment
10 owners" shall be deemed to correspond to the term
11 "association".

12 SECTION 7. Section 514B-71, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§514B-71 Condominium education trust fund. (a) The
15 commission shall establish a condominium education trust fund
16 that the commission and the office of self-governance oversight
17 shall use for educational purposes. Educational purposes shall
18 include financing or promoting:

19 (1) Education and research in the field of condominium
20 management, condominium project registration, and real



1 estate, for the benefit of the public and those
2 required to be registered under this chapter;

3 (2) The improvement and more efficient administration of
4 associations; and;

5 (3) Expeditious and inexpensive procedures for resolving
6 association disputes [~~and~~

7 ~~(4) Support for mediation of condominium-related~~
8 ~~disputes.]_~~

9 (b) The commission and office of self-governance oversight
10 shall use all moneys in the condominium education trust fund for
11 purposes consistent with subsection (a)."

12 SECTION 8. Section 514B-73, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By amending subsection (b) to read:

15 "(b) The commission and the director of commerce and
16 consumer affairs may use moneys in the condominium education
17 trust fund collected pursuant to sections 514A-40, 514A-95.1,
18 and 514B-72, and the rules of the commission to employ necessary
19 personnel not subject to chapter 76 for additional staff
20 support, to provide office space, and to purchase equipment,
21 furniture, and supplies required by the commission to carry out



1 its responsibilities under this part. The condominium czar may
2 use moneys in the condominium education trust fund collected
3 pursuant to sections 514A-40, 514A-95.1, and 514B-72, for
4 educational purposes, including the establishment of a
5 condominium education class and necessary purchase of equipment
6 and supplies required by the office of self-governance oversight
7 to carry out its responsibilities under this part and part ."

8 2. By amending subsection (d) to read:

9 "(d) The [~~commission~~] condominium czar, shall annually
10 submit to the legislature, no later than twenty days prior to
11 the convening of each regular session:

12 (1) A summary of the programs funded during the prior
13 fiscal year and the amount of money in the fund,
14 including a statement of which programs were directed
15 specifically at the education of condominium owners;

16 [~~and~~]

17 (2) A copy of the budget for the current fiscal year,
18 including summary information on programs that were
19 funded or are to be funded and the target audience for
20 each program. The budget shall include a line item



1 reflecting the total amount collected from condominium
2 associations [-]; and

3 (3) A detailed summary of all cases and opinions issued
4 during the prior fiscal year."

5 SECTION 9. Section 514B-104, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Except as provided in section 514B-105, and subject
8 to the provisions of the declaration and bylaws, the
9 association, even if unincorporated, may:

10 (1) Adopt and amend the declaration, bylaws, and rules and
11 regulations;

12 (2) Adopt and amend budgets for revenues, expenditures,
13 and reserves and collect assessments for common
14 expenses from unit owners, subject to section
15 514B-148;

16 (3) Hire and discharge managing agents and other
17 independent contractors, agents, and employees;

18 (4) Institute, defend, or intervene in litigation or
19 administrative proceedings in its own name on behalf
20 of itself or two or more unit owners on matters
21 affecting the condominium. For the purposes of



- 1 actions under chapter 480, associations shall be
2 deemed to be "consumers";
- 3 (5) Make contracts and incur liabilities;
- 4 (6) Regulate the use, maintenance, repair, replacement,
5 and modification of common elements;
- 6 (7) Cause additional improvements to be made as a part of
7 the common elements;
- 8 (8) Acquire, hold, encumber, and convey in its own name
9 any right, title, or interest to real or personal
10 property; provided that:
- 11 (A) Designation of additional areas to be common
12 elements or subject to common expenses after the
13 initial filing of the declaration or bylaws shall
14 require the approval of at least sixty-seven per
15 cent of the unit owners;
- 16 (B) If the developer discloses to the initial buyer
17 in writing that additional areas will be
18 designated as common elements whether pursuant to
19 an incremental or phased project or otherwise,
20 the requirements of this paragraph shall not
21 apply as to those additional areas; and



- 1 (C) The requirements of this paragraph shall not
2 apply to the purchase of a unit for a resident
3 manager, which may be purchased with the approval
4 of the board;
- 5 (9) Subject to section 514B-38, grant easements, leases,
6 licenses, and concessions through or over the common
7 elements and permit encroachments on the common
8 elements;
- 9 (10) Impose and receive any payments, fees, or charges for
10 the use, rental, or operation of the common elements,
11 other than limited common elements described in
12 section 514B-35(2) and (4), and for services provided
13 to unit owners;
- 14 (11) Impose charges and penalties, including late fees and
15 interest, for late payment of assessments and levy
16 reasonable fines for violations of the declaration,
17 bylaws, rules, and regulations of the association,
18 either in accordance with the bylaws or, if the bylaws
19 are silent, pursuant to a resolution adopted by the
20 board that establishes a fining procedure that states
21 the basis for the fine and allows an appeal to the



1 board of the fine with notice and an opportunity to be
 2 heard and providing that if the fine is paid, the unit
 3 owner shall have the right to initiate a dispute
 4 resolution process as provided by ~~[sections]~~ section
 5 514B-161[7] or 514B-162, by requesting dispute
 6 intervention or dispute resolution assistance from the
 7 condominium czar as provided by section 514B-D or
 8 514B-E, or by filing a request for an administrative
 9 hearing under a pilot program administered by the
 10 department of commerce and consumer affairs;

11 (12) Impose reasonable charges for the preparation and
 12 recordation of amendments to the declaration,
 13 documents requested for resale of units, or statements
 14 of unpaid assessments;

15 (13) Provide for cumulative voting through a provision in
 16 the bylaws;

17 (14) Provide for the indemnification of its officers,
 18 board, committee members, and agents, and maintain
 19 directors' and officers' liability insurance;



- 1 (15) Assign its right to future income, including the right
2 to receive common expense assessments, but only to the
3 extent section 514B-105(e) expressly so provides;
- 4 (16) Exercise any other powers conferred by the declaration
5 or bylaws;
- 6 (17) Exercise all other powers that may be exercised in
7 this State by legal entities of the same type as the
8 association, except to the extent inconsistent with
9 this chapter;
- 10 (18) Exercise any other powers necessary and proper for the
11 governance and operation of the association; and
- 12 (19) By regulation, subject to sections 514B-146, 514B-161,
13 and 514B-162, require that disputes between the board
14 and unit owners or between two or more unit owners
15 regarding the condominium be submitted to nonbinding
16 alternative dispute resolution in the manner described
17 in the regulation as a prerequisite to commencement of
18 a judicial proceeding."

19 SECTION 10. Section 514B-105, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§514B-105 Association; limitations on powers. (a) The
2 declaration and bylaws may not impose limitations on the power
3 of the association to deal with the developer which are more
4 restrictive than the limitations imposed on the power of the
5 association to deal with other persons.

6 (b) Unless otherwise permitted by the declaration, bylaws,
7 or this chapter, an association may adopt rules and regulations
8 that affect the use of or behavior in units that may be used for
9 residential purposes only to:

- 10 (1) Prevent any use of a unit which violates the
11 declaration or bylaws;
- 12 (2) Regulate any behavior in or occupancy of a unit which
13 violates the declaration or bylaws or unreasonably
14 interferes with the use and enjoyment of other units
15 or the common elements by other unit owners; or
- 16 (3) Restrict the leasing of residential units to the
17 extent those rules are reasonably designed to meet
18 underwriting requirements of institutional lenders who
19 regularly lend money secured by first mortgages on
20 units in condominiums or regularly purchase those
21 mortgages.



1 Otherwise, the association may not regulate any use of or
2 behavior in units by means of the rules and regulations.

3 (c) No association shall deduct and apply portions of
4 common expense payments received from a unit owner to unpaid
5 late fees, legal fees, fines, and interest (other than amounts
6 remitted by a unit in payment of late fees, legal fees, fines,
7 and interest) unless the board adopts and distributes to all
8 owners a policy stating that:

9 (1) Failure to pay late fees, legal fees, fines, and
10 interest may result in the deduction of such late
11 fees, legal fees, fines, and interest from future
12 common expense payments, so long as a delinquency
13 continues to exist; and

14 (2) Late fees may be imposed against any future common
15 expense payment that is less than the full amount owed
16 due to the deduction of unpaid late fees, legal fees,
17 fines, and interest from the payment.

18 (d) No unit owner who requests legal or other information
19 from the association, the board, the managing agent, or their
20 employees or agents, shall be charged for the reasonable cost of
21 providing the information unless the association notifies the



1 unit owner that it intends to charge the unit owner for the
2 reasonable cost. The association shall notify the unit owner in
3 writing at least ten days prior to incurring the reasonable cost
4 of providing the information, except that no prior notice shall
5 be required to assess the reasonable cost of providing
6 information on delinquent assessments or in connection with
7 proceedings to enforce the law or the association's governing
8 documents.

9 After being notified of the reasonable cost of providing
10 the information, the unit owner may withdraw the request, in
11 writing. A unit owner who withdraws a request for information
12 shall not be charged for the reasonable cost of providing the
13 information.

14 (e) Subject to any approval requirements and spending
15 limits contained in the declaration or bylaws, the association
16 may authorize the board to borrow money for the repair,
17 replacement, maintenance, operation, or administration of the
18 common elements and personal property of the project, or the
19 making of any additions, alterations, and improvements thereto;
20 provided that written notice of the purpose and use of the funds
21 is first sent to all unit owners and owners representing fifty



1 per cent of the common interest vote or give written consent to
2 the borrowing[-]; provided further that if the cost of borrowing
3 is a major expenditure in excess of \$10,000 per unit owner, the
4 board shall hold a special meeting of the association to approve
5 the expenditure. In connection with the borrowing, the board
6 may grant to the lender the right to assess and collect monthly
7 or special assessments from the unit owners and to enforce the
8 payment of the assessments or other sums by statutory lien and
9 foreclosure proceedings. The cost of the borrowing, including,
10 without limitation, all principal, interest, commitment fees,
11 and other expenses payable with respect to the borrowing or the
12 enforcement of the obligations under the borrowing, shall be a
13 common expense of the project. For purposes of this section,
14 the financing of insurance premiums by the association within
15 the policy period shall not be deemed a loan and no lease shall
16 be deemed a loan if it provides that at the end of the lease the
17 association may purchase the leased equipment for its fair
18 market value.

19 (f) If the association or the board is involved in a
20 dispute intervention through the office of self-governance
21 oversight, pursuant to section 514B-D, no special assessment



1 related to the dispute, including association attorneys' fees,
2 shall be assessed or collected from unit owners until the
3 condominium czar has completed the intervention investigation."

4 SECTION 11. Section 514B-154.5, Hawaii Revised Statutes,
5 is amended to read as follows:

6 "[+] §514B-154.5 [+] Association documents to be provided.

7 (a) Notwithstanding any other provision in the declaration,
8 bylaws, or house rules, if any, the following documents,
9 records, and information, whether maintained, kept, or required
10 to be provided pursuant to this section or section 514B-152,
11 514B-153, or 514B-154, shall be made available to any unit owner
12 and the owner's authorized agents by the managing agent,
13 resident manager, board through a board member, or the
14 association's representative:

15 (1) All financial and other records sufficiently detailed
16 in order to comply with requests for information and
17 disclosures related to the resale of units;

18 (2) An accurate copy of the declaration, bylaws, house
19 rules, if any, master lease, if any, a sample original
20 conveyance document, and all public reports and any
21 amendments thereto;



- 1 (3) Detailed, accurate records in chronological order of
2 the receipts and expenditures affecting the common
3 elements, specifying and itemizing the maintenance and
4 repair expenses of the common elements and any other
5 expenses incurred and monthly statements indicating
6 the total current delinquent dollar amount of any
7 unpaid assessments for common expenses;
- 8 (4) All records and the vouchers authorizing the payments
9 and statements kept and maintained at the address of
10 the project, or elsewhere within the State as
11 determined by the board, subject to section 514B-152;
- 12 (5) All signed and executed agreements for managing the
13 operation of the property, expressing the agreement of
14 all parties, including but not limited to financial
15 and accounting obligations, services provided, and any
16 compensation arrangements, including any subsequent
17 amendments;
- 18 (6) An accurate and current list of members of the
19 condominium association and the members' current
20 addresses and the names and addresses of the vendees
21 under an agreement of sale, if any. A copy of the



- 1 list shall be available, at cost, to any unit owner or
2 owner's authorized agent who furnishes to the managing
3 agent, resident manager, or the board a duly executed
4 and acknowledged affidavit stating that the list:
- 5 (A) Shall be used by the unit owner or owner's
6 authorized agent personally and only for the
7 purpose of soliciting votes or proxies or for
8 providing information to other unit owners with
9 respect to association matters; and
 - 10 (B) Shall not be used by the unit owner or owner's
11 authorized agent or furnished to anyone else for
12 any other purpose;
- 13 (7) The association's most current financial statement, at
14 no cost or on twenty-four-hour loan, at a convenient
15 location designated by the board;
- 16 (8) Meeting minutes of the association, pursuant to
17 section 514B-122;
- 18 (9) Meeting minutes of the board, including executive
19 session records of voting results regarding the
20 imposition of special assessments, charges, and fines,



1 including legal fees, pursuant to section 514B-126,
2 which shall be:

3 (A) Available for examination by unit owners or
4 owners' authorized agents at no cost or on
5 twenty-four-hour loan at a convenient location at
6 the project, to be determined by the board; or

7 (B) Transmitted to any unit owner or owner's
8 authorized agent making a request for the minutes
9 within fifteen days of receipt of the request by
10 the owner or owner's authorized agent; provided
11 that:

12 (i) The minutes shall be transmitted by mail,
13 electronic mail transmission, or facsimile,
14 by the means indicated by the owner or
15 owner's authorized agent, if the owner or
16 owner's authorized agent indicated a
17 preference at the time of the request; and

18 (ii) The owner or owner's authorized agent shall
19 pay a reasonable fee for administrative
20 costs associated with handling the request,
21 subject to section 514B-105(d);



- 1 (10) Financial statements, general ledgers, the accounts
2 receivable ledger, accounts payable ledgers, check
3 ledgers, insurance policies, contracts, and invoices
4 of the association for the duration those records are
5 kept by the association, and any documents regarding
6 delinquencies of ninety days or more shall be
7 available for examination by unit owners or owners'
8 authorized agents at convenient hours at a place
9 designated by the board; provided that:
- 10 (A) The board may require unit owners or owners'
11 authorized agents to furnish to the association a
12 duly executed and acknowledged affidavit stating
13 that the information is requested in good faith
14 for the protection of the interests of the
15 association, its members, or both; and
- 16 (B) Unit owners or owners' authorized agents shall
17 pay for administrative costs in excess of eight
18 hours per year;
- 19 (11) Proxies, tally sheets, ballots, unit owners' check-in
20 lists, and the certificate of election subject to
21 section 514B-154(c);



- 1 (12) Copies of an association's documents, records, and
2 information, whether maintained, kept, or required to
3 be provided pursuant to this section or section
4 514B-152, 514B-153, or 514B-154;
- 5 (13) A copy of the management contract from the entity that
6 manages the operation of the property before the
7 organization of an association; and
- 8 (14) Other documents requested by a unit owner or owner's
9 authorized agent in writing; provided that the board
10 shall give written authorization or written refusal
11 with an explanation of the refusal within thirty
12 calendar days of receipt of a request for documents
13 pursuant to this paragraph.
- 14 (b) Subject to section 514B-105(d), copies of the items in
15 subsection (a) shall be provided to any unit owner or owner's
16 authorized agent upon the owner's or owner's authorized agent's
17 request; provided that the owner or owner's authorized agent
18 pays a reasonable fee for duplication, postage, stationery, and
19 other administrative costs associated with handling the request.
- 20 (c) Notwithstanding any provision in the declaration,
21 bylaws, or house rules providing for another period of time, all



1 documents, records, and information listed under subsection (a),
2 whether maintained, kept, or required to be provided pursuant to
3 this section or section 514B-152, 514B-153, or 514B-154, shall
4 be provided no later than thirty days after receipt of a unit
5 owner's or owner's authorized agent's written request, unless a
6 lesser time is provided pursuant to this section or section
7 514B-152, 514B-153, or 514B-154, and except as provided in
8 subsection (a)(14).

9 (d) Any documents, records, and information, whether
10 maintained, kept, or required to be provided pursuant to this
11 section or section 514B-152, 514B-153, or 514B-154, may be made
12 available electronically to the unit owner or owner's authorized
13 agent if the owner or owner's authorized agent requests such in
14 writing.

15 (e) An association may comply with this section or section
16 514B-152, 514B-153, or 514B-154 by making the required
17 documents, records, and information available to unit owners or
18 owners' authorized agents for download through an internet site,
19 at the option of each unit owner or owner's authorized agent and
20 at no cost to the unit owner or owner's authorized agent.



1 (f) Any fee charged to a unit owner or owner's authorized
2 agent to obtain copies of the association's documents, records,
3 and information, whether maintained, kept, or required to be
4 provided pursuant to this section or section 514B-152, 514B-153,
5 or 514B-154, shall be reasonable; provided that a reasonable fee
6 shall include administrative and duplicating costs and shall not
7 exceed \$1 per page, or portion thereof, except that the fee for
8 pages exceeding eight and one-half inches by fourteen inches may
9 exceed \$1 per page.

10 (g) Copies of the items in subsection (a) shall be
11 provided to the condominium czar no later than thirty days after
12 receipt of the condominium czar's request or as determined by
13 the condominium czar upon the showing of good cause; provided
14 that if the condominium czar is denied access to any item in
15 subsection (a), the condominium czar may request the commission
16 to conduct an investigation of the matter pursuant to section
17 514B-65.

18 [~~g~~] (h) This section shall apply to condominiums organized
19 under chapter 514A or 514B.



1 ~~[(h)]~~ (i) Nothing in this section shall be construed to
2 create any new requirements for the release of documents,
3 records, or information."

4 SECTION 12. Section 514B-157, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~[-]~~§514B-157~~[+]~~ Attorneys' fees, delinquent assessments,
7 and expenses of enforcement. (a) Fees for attorneys' services
8 incurred by a board shall not be reimbursed by individual unit
9 owners when such services are for the purposes of:

10 (1) Responding to written or oral inquiries, comments, or
11 complaints by unit owners regarding condominium
12 operations, property usage, board fiduciary duties,
13 common elements, and resident actions;

14 (2) Expressing unit owners' intentions to challenge the
15 existing declaration, bylaws, and rules of the
16 association; or

17 (3) Participation in criminal defense resulting from unit
18 owners' allegations of wrongdoing based on the board's
19 performance of fiduciary responsibilities.



1 [~~a~~] (b) All costs and expenses, including reasonable
2 attorneys' fees, incurred by or on behalf of the association
3 for:

4 (1) Collecting any delinquent assessments against any
5 owner's unit;

6 (2) Foreclosing any lien thereon; or

7 (3) Enforcing any provision of the declaration, bylaws,
8 house rules, and this chapter, or the rules of the
9 real estate commission[~~r~~],
10 against an owner, occupant, tenant, employee of an owner, or any
11 other person who may in any manner use the property, shall be
12 promptly paid on demand to the association by such person or
13 persons; provided that if the claims upon which the association
14 takes any action are not substantiated, all costs and expenses,
15 including reasonable attorneys' fees, incurred by any such
16 person or persons as a result of the action of the association,
17 shall be promptly paid on demand to such person or persons by
18 the association[~~-~~]; provided further that if a unit owner opens
19 an investigation with the office of the condominium czar, costs
20 and expenses for enforcement shall be suspended until the



1 condominium czar completes the investigation and issues a
2 recommendation on the matter.

3 ~~(b)~~ (c) If any claim by an owner is substantiated in any
4 action against an association, any of its officers or directors,
5 or its board to enforce any provision of the declaration,
6 bylaws, house rules, or this chapter, then all reasonable and
7 necessary expenses, costs, and attorneys' fees incurred by an
8 owner shall be awarded to such owner; provided that no such
9 award shall be made in any derivative action unless:

10 (1) The owner first shall have demanded and allowed
11 reasonable time for the board to pursue such
12 enforcement; or

13 (2) The owner demonstrates to the satisfaction of the
14 court that a demand for enforcement made to the board
15 would have been fruitless.

16 If any claim by an owner is not substantiated in any court
17 action against an association, any of its officers or directors,
18 or its board to enforce any provision of the declaration,
19 bylaws, house rules, or this chapter, then all reasonable and
20 necessary expenses, costs, and attorneys' fees incurred by an
21 association shall be awarded to the association, unless before



1 filing the action in court the owner has first submitted the
2 claim to mediation, or to arbitration under subpart D, and made
3 a good faith effort to resolve the dispute under any of those
4 procedures. Plaintiff condominium unit owner did not "incur"
5 attorneys' fees and costs in owner's action against defendant
6 condominium association and was therefore not entitled to
7 attorneys' fees and costs beyond the portion of the total amount
8 requested that plaintiff paid where law firm representing
9 plaintiff's billing statements were sent to a third party and
10 there was no agreement with law firm contractually binding
11 plaintiff to pay those fees and costs; in order for plaintiff
12 condominium unit owner to have "incurred" attorneys' fees and
13 costs under subsection (b) in an action against defendant
14 condominium association, plaintiff must have paid or be legally
15 obligated to pay the fees and costs to the law firm representing
16 plaintiff."

17 SECTION 13. Section 514B-161, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) If an apartment owner or the board of directors
20 requests mediation of a dispute involving the interpretation or
21 enforcement of the association of apartment owners' declaration,



1 bylaws, or house rules, the other party in the dispute shall be
 2 required to participate in mediation. Either party may request
 3 guidance regarding the mediation process from the office of
 4 self-governance oversight. Each party shall be wholly
 5 responsible for its own costs of participating in mediation,
 6 unless both parties agree that one party shall pay all or a
 7 specified portion of the mediation costs[-] as determined by the
 8 condominium czar. If a party refuses to participate in the
 9 mediation of a particular dispute, a court may take this refusal
 10 into consideration when awarding expenses, costs, and attorneys'
 11 fees."

12 SECTION 14. Section 514B-162, Hawaii Revised Statutes, is
 13 amended by amending subsection (a) to read as follows:

14 "(a) At the request of any party, any dispute concerning
 15 or involving one or more unit owners and an association, its
 16 board, managing agent, or one or more other unit owners relating
 17 to the interpretation, application, or enforcement of this
 18 chapter or the association's declaration, bylaws, or house rules
 19 adopted in accordance with its bylaws shall be submitted to
 20 arbitration. Either party may request informational assistance
 21 regarding the arbitration from the office of self-governance



1 oversight. The arbitration shall be conducted, unless otherwise
2 agreed by the parties, in accordance with the rules adopted by
3 the commission and of chapter 658A; provided that the rules of
4 the arbitration service conducting the arbitration shall be used
5 until the commission adopts its rules; provided further that
6 where any arbitration rule conflicts with chapter 658A, chapter
7 658A shall prevail; and provided further that notwithstanding
8 any rule to the contrary, the arbitrator shall conduct the
9 proceedings in a manner which affords substantial justice to all
10 parties. The arbitrator shall be bound by rules of substantive
11 law and shall not be bound by rules of evidence, whether or not
12 set out by statute, except for provisions relating to privileged
13 communications. The arbitrator shall permit discovery as
14 provided for in the Hawaii rules of civil procedure; provided
15 that the arbitrator may restrict the scope of such discovery for
16 good cause to avoid excessive delay and costs to the parties or
17 the arbitrator may refer any matter involving discovery to the
18 circuit court for disposition in accordance with the Hawaii
19 rules of civil procedure then in effect."

20 SECTION 15. There is appropriated out of the condominium
21 education trust fund the sum of \$ or so much thereof as



1 may be necessary for fiscal year 2016-2017 to be deposited into
2 the office of self-governance special fund for administrative
3 costs associated with the establishment of the office of self-
4 governance oversight within the department of the attorney
5 general, including the hiring of necessary staff.

6 SECTION 16. There is appropriated out of the office of
7 self-governance special fund the sum of \$. or so much
8 thereof as may be necessary for fiscal year 2016-2017 for
9 administrative costs associated with the establishment of the
10 office of self-governance oversight within the department of the
11 attorney general, including the hiring of necessary staff.

12 The sum appropriated shall be expended by the department of
13 the attorney general for the purposes of this Act.

14 PART II

15 SECTION 17. The legislative reference bureau shall conduct
16 a study on the office of self-governance oversight established
17 pursuant to this measure. The study shall include at least the
18 following:

- 19 (1) The effects of the office of self-governance oversight
20 on existing evaluative mediation, arbitration, and
21 court remedies;



Report Title:

Condominiums; Office of Self-Governance Oversight; Study;
Appropriation

Description:

Establishes the Office of Self-Governance Oversight, to be headed by the condominium czar, within the Department of the Attorney General. Appropriates funds for administrative costs associated with the establishment of the Office of Self-Governance Oversight. Requires the Legislative Reference Bureau to conduct a study. (HB1802 HD1)

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

