

STAND. COM. REP. NO.

1340

Honolulu, Hawaii

APR 05 2017

RE: H.B. No. 1498
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred H.B. No. 1498, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose and intent of this measure is to require a copy
of any contract between a condominium association and the general
manager or resident manager to be made available to any unit
owner, and permits certain personal information to be redacted
from the contract copy.

Your Committee received testimony in support of this measure
from Hui 'Oia'i'o, Associa, Hawaii Council of Associations of
Apartment Owners, and two individuals. Your Committee received
comments on this measure from the Regulated Industries Complaints
Office of the Department of Commerce and Consumer Affairs and one
individual.

Prior to decision making on this measure, your Committee made
available for public review a proposed S.D. 1 of this measure.
The proposed S.D. 1 retained the contents of this measure and also
inserted provisions that:

- (1) Clarify that in cases where the removal or replacement
of a director elected by a class of unit owners is



authorized, such removal or replacement may be by a majority of only the members of that class;

- (2) Specify that, for an election in a mixed-use condominium project where directors are elected by different classes of owners, an association may cast the vote or votes allocated to any nonresidential unit owned by the association where those eligible to vote in the election are limited to owners of one or more nonresidential units, including the nonresidential unit owned by the association; and
- (3) Clarify the procedures to amend condominium association declarations, bylaws, and other governing instruments that are not of a material adverse nature to condominium owners or do not imperil the viability or stability of the condominium association.

Your Committee received testimony in support of the proposed S.D. 1 from the Hawaii Council of Associations of Apartment Owners, Hui Malama O Hale, and four individuals. Your Committee received testimony in opposition to the proposed S.D. 1 from Hui 'Oia'i'o and thirteen individuals. Your Committee received comments on the proposed S.D. 1 from the Regulated Industries Complaints Office of the Department of Commerce and Consumer Affairs, Hawai'i Association of Parliamentarians, Associa, and three individuals.

Your Committee finds that the proposed S.D. 1 requires copies of contracts between a condominium association and its resident manager or general manager to be disclosed to a unit owner, with the exception of certain personal information. According to testimony received by your Committee, many concerns raised by condominium owners often involve the owners' inability to obtain information from their condominium boards regarding job descriptions, duties, and compensation of general managers, resident managers, and other persons retained as employees to manage the on-site operation of a condominium. The proposed S.D. 1 will therefore eliminate any ambiguity in the existing law regarding whether condominium owners are entitled to access this information.

Your Committee further finds that existing condominium law permits different classes of directors in mixed-use projects.



Existing law also provides for the removal of directors by a majority of the unit owners. The proposed S.D. 1 clarifies that the removal or replacement of a director elected by a class of unit owners shall only be by a majority of the members of that class. Your Committee notes that the proposed S.D. 1 does not give a condominium board a weighted vote to remove directors, but simply provides that if a director is elected by a class of unit owners, then the director may be removed or replaced only by a vote of a majority of the common interest represented by that class. Your Committee additionally finds that the proposed S.D. 1 also makes an exception for votes cast for nonresidential units owned by an association to ensure that elections may be held and directors may be elected. This is a very narrow exception and has no effect on directors elected by owners of residential units; rather, this exception simply allows a condominium association, through its board, to cast the vote allocated to a nonresidential unit owned by the association in elections where the only persons eligible to vote are owners of nonresidential units and the association owns one or more of those nonresidential units.

Your Committee also finds that clarification is needed in the existing condominium law regarding who can serve as a board member of a condominium association. Your Committee notes that tenants and owners within a condominium often have different interests. Because tenants are not members of a condominium association, they are not directly subject to the monthly maintenance fees and are not contributing to the upkeep of the property. Furthermore, since tenants are not members of an association, it is not appropriate for tenants to be members of a condominium association board, and thus able to set policy and rules for owners and make decisions regarding how association money is spent. Accordingly, an amendment to the proposed S.D. 1 is needed to address this issue.

Finally, your Committee has heard the testimony expressing concern over language in the proposed S.D. 1 that would change the process for a condominium board to amend its declaration and bylaws. Your Committee notes that a condominium's declarations and bylaws are the core governing documents for a condominium association and the proposed S.D. 1 could potentially enable a rogue condominium board to more easily amend its declarations or bylaws, to the detriment of other members of the association.



Amendments to the proposed S.D. 1 to remove this language are therefore needed.

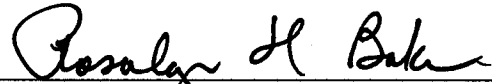
Your Committee has amended this measure by adopting the proposed S.D. 1 and by making further amendments which:

- (1) Clarify that condominium owners are permitted to receive a copy of any contract, written job description, and compensation between a condominium association and any person or entity retained by the association to manage on-site the operation of the property, including but not limited to the general manager, operations manager, resident manager, or site manager, but excluding certain personal information;
- (2) Specify that tenants are prohibited from serving as board members of a condominium association;
- (3) Remove language that would have updated the procedures to amend condominium association declarations, bylaws, and other governing instruments that were not of a material adverse nature to condominium owners or did not imperil the viability or stability of the condominium association; and
- (4) Make technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1498, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1498, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,



ROSALYN H. BAKER, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1498 HD1	CPH	3/21/17		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310	<input type="checkbox"/> Recommit 2313	
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	/			
NISHIHARA, Clarence K. (VC)	/			
CHANG, Stanley	/			
ESPERO, Will				/
IHARA, Jr., Les				/
KIDANI, Michelle N.				/
RUDERMAN, Russell E.	/			
TOTAL	4			3
Recommendation:				
<input checked="" type="checkbox"/> Adopted		<input type="checkbox"/> Not Adopted		
Chair's or Designee's Signature:				
<i>Clarence K. Nishihara</i>				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes