

SB2060

Measure Title: RELATING TO CONDOMINIUMS.

Report Title: Condominiums; Associations; Unit Owners; Mediation;
Arbitration; Condominium Education Trust Fund

Description: Expands the scope of the condominium education trust fund to cover voluntary binding arbitration between interested parties. Amends the conditions that mandate mediation and exceptions to mandatory mediation. Makes conforming amendments.

Companion: [HB1874](#)

Package: None

Current Referral: CPH/JDC, WAM

Introducer(s): BAKER, ESPERO, KEITH-AGARAN, TOKUDA, S. Chang, Gabbard, Harimoto, Ihara, Inouye, Kidani, Kim, Nishihara, L. Thielen

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEES ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH
AND
JUDICIARY

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, February 7, 2018
8:30 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 2060, RELATING TO CONDOMINIUMS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, TO THE HONORABLE BRIAN T. TANIGUCHI, CHAIR, AND MEMBERS OF THE COMMITTEES:

My name is Nikki Senter, and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). Thank you for the opportunity to testify on S.B. 2060, which is a companion to H.B. 1874. The Commission submits the following comments.

The purposes of this bill are to: (1) permit annual condominium trust funds fees designated for educational purposes to be used for a new section on voluntary binding arbitration of condominium disputes, in addition to mediation, by amending Hawaii Revised Statutes ("HRS") sections 514B-71 and 514B-72 and Act 187, Session Laws of Hawaii 2013; and (2) amend the conditions that mandate mediation and exceptions to mandatory mediation by amending HRS section 514B-161.

The Commission supports arbitration as an additional avenue for resolving condominium disputes; however, it has concerns about section 5 of the bill, relating to mediation. Section 5 expands permissible mediation subjects to include: any claims presented during the mediation; any dispute that falls outside the scope of threatened

property damage or the health or safety of unit owners or any other person; assessments; personal injury claims; or matters that would affect the availability of any coverage pursuant to an insurance policy obtained by or on behalf of an association. This language is overbroad and unnecessarily expands the scope of permissible topics to subject areas historically not intended to be the subject of mediated disputes, including, but not limited to, disputes regarding common interest ownership, common elements, and unit size.

Thank you for the opportunity to testify on S.B. 2060.



P.O. Box 976
Honolulu, Hawaii 96808

February 5, 2017

Sen. Rosalyn Baker, Chair
Sen. Jill Tokuda, Vice-Chair
Senate Committee on Commerce, Consumer Protection & Health

Re: Testimony in SUPPORT of SB 2060 RELATING TO CONDOMINIUMS
Hearing: Wed., Feb. 7, 2018, 8:30 a.m., Con. Rm. #229

Chair Baker, Vice-Chair Tokuda and Members of the Committee:

This testimony is submitted on behalf of the Community Associations Institute ("CAI"). CAI supports SB2060, *in its current form*, for reasons stated herein.

SB2060 derives from a 2017 bill (HB 1499 HD1 SD2) that CAI was able to support in its *final* form. CAI notes that SB 2060 excludes parts of former HB 1499 HD1 SD1. Those excluded parts are reflected in SB 2054.

Broadly speaking, SB 2060 does two things. First, it provides needed clarity to the condominium mediation statute by amending HRS §514B-161. Second, it provides support for parties who voluntarily choose binding arbitration for condominium disputes.

The pressing need is for amendment of HRS §514B-161. Supporting the voluntary choice to engage in binding arbitration is also meritorious.

The current condominium mediation statute, HRS §514B-161, is substantially deficient. SB 2060 provides clarity regarding the scope of mandatory mediation, takes the relatively recent subsidy for "evaluative" mediation into account, and provides a mechanism to compel participation in mediation. The proposed form of amendment to HRS §514B-161 has immense utility and will be a vast improvement over current law.

Honorable Roy Takumi
Honorable Linda Ichiyama
February 4, 2018
Page 2 of 2

Other aspects of SB2060 incentivize parties to voluntarily choose binding arbitration of condominium disputes by subsidizing the expense of such arbitrations. That is a wholly worthwhile and laudable goal.

The incentive is contingent on first making the effort to mediate the dispute, using "evaluative" techniques. Pairing evaluative mediation with voluntary binding arbitration holds the prospect of increasing efficiency in addressing condominium-related disputes.

Use of the condominium education trust fund to support voluntary binding arbitration is entirely consistent with the goal of promoting alternative dispute resolution. Associations make substantial contributions to the fund and deserve to benefit from it. Mediation has been proven to be very successful in resolving condominium disputes under Act 187.

CAI supports SB 2060, in its current form.

Community Associations Institute, by

Richard Emery

For its Legislative Action Committee

SB-2060

Submitted on: 2/2/2018 9:28:45 PM

Testimony for CPH on 2/7/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jane Sugimura	HI Council of Assoc. of Apt. Owners a	Support	No

Comments:

SB-2060

Submitted on: 2/3/2018 10:09:17 PM

Testimony for CPH on 2/7/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dale	Head	Support	Yes

Comments:

This is a good bill. However, entering arbitration should be MANDATORY !!! 'Self-government' does NOT work as there is NO penalty on Board members for misbehaving. There are a great many 'horror stories' out there, but, without an Office of Ombudsman, there is no fear of being held accountable for misconduct.

SB-2060

Submitted on: 2/5/2018 11:43:50 AM

Testimony for CPH on 2/7/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lila Mower	Hui `Oia`i`o	Oppose	No

Comments:

Without encouraging Association Boards to fulfil their fiduciary duty by initially attempting to resolve disputes in a friendlier neighborly environment and by directing these associations to utilize alternative means of dispute resolution such as mediation or arbitration, "self-governance" is subverted.

Mediation and arbitration are as much alternatives to resolving disputes as is a condo ombudsman, but mediation and arbitration are costlier.

SB-2060

Submitted on: 2/6/2018 11:24:42 PM

Testimony for CPH on 2/7/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
deb ramirez		Support	No

Comments:

Richard J. Port
1600 Ala Moana Blvd. #3100
Honolulu, Hawaii 96815
Tel 808-941-9624
e-mail: portr001@hawaii.rr.com

Measure: SB 2060 Relating to Condominiums

Date and Time of Hearing: Wednesday, February 7, 2018, 8:30 a.m.
Conference room 229

Committee: Committee on Commerce, Consumer Protection, and Health
Committee on Judiciary

I am testifying in strong support of SB 2060. I have been involved in testifying on condominium bills for more than thirty-five years. Although I have been president or a member of my condominium board for most of those years, I have generally supported legislation in support of owner rights in relation to their Boards because I know that condominium boards exercise great authority through their executive, legislative, and judicial powers.

I am testifying in support of SB2060 because it expands dispute resolution options for condo residents, boards and managing agents. This bill, which is similar to the provisions of HB 1499 (2017) provides for the use of the condominium education fund which all condominium owners currently pay into. In addition, it provides for voluntary binding arbitration subsidized by the Condominium Education Fund and expands the dispute resolution remedies available to our condo community. In this way, disputes that arise in condos can be resolved quickly without crowding court calendars.

I appreciate this opportunity to provide my testimony in support of SB 2060 and request that your committee pass this bill out with out changes.

Richard Port