

MAR - 6 2020

SENATE CONCURRENT RESOLUTION

REQUESTING THAT THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
CONVENE A TASK FORCE TO RECOMMEND LAWS AND REGULATIONS
CONCERNING CONDOMINIUM ASSOCIATION DIRECTOR AND OFFICER
EDUCATION AND TRAINING.

1 WHEREAS, Hawaii has the highest number of condominium
2 association board of directors and officers' liability insurance
3 claims in the country and the amount of the claims are larger
4 than those on the mainland; and
5

6 WHEREAS, most, if not all, of the claims made can be
7 attributed to a lack of knowledge or experience of unpaid,
8 volunteer directors of condominium associations relating to
9 their respective governing documents, responsibilities as board
10 members, and their liability for their failure to act in
11 accordance with their fiduciary duties; and
12

13 WHEREAS, because insurance carriers in the State that
14 provide directors and officers liability insurance policies for
15 condominium associations have diminished to only two or three
16 carriers, the claims have caused all condominium association
17 director and officer insurance coverage premiums across the
18 State to increase, as all condominium associations are in the
19 same risk pool; and
20

21 WHEREAS, many of the claims have led to lawsuits that have
22 resulted in substantial legal defense costs and multi-million
23 dollar judgments against the association and their board
24 members, and in some cases, judgment costs are not covered by
25 insurance, meaning they are passed on to owners; and
26

27 WHEREAS, even if claims do not lead to a lawsuit, disputes
28 require the association to incur legal or consultant expenses to
29 resolve a dispute, the costs of which are not typically covered
30 by the association's budget; and
31



1 WHEREAS, mandating education for condominium association
2 directors and officers concerning ethical and legal standards
3 pertaining to the condominium association may help to avoid
4 future claims, which may also help to reduce association fees
5 for Hawaii residents; and

6
7 WHEREAS, the Condominium Education Trust Fund has collected
8 substantial funds over the years from condominium associations
9 throughout the State, and one of the purposes of the fund is to
10 educate condominium owners and association directors; now,
11 therefore,

12
13 BE IT RESOLVED by the Senate of the Thirtieth Legislature
14 of the State of Hawaii, Regular Session of 2020, the House of
15 Representatives concurring, that the Department of Commerce and
16 Consumer Affairs' Real Estate Commission is requested to convene
17 a task force to recommend laws and regulations concerning the
18 mandatory educational, training, and certification requirements
19 of condominium association directors and officers; and

20
21 BE IT FURTHER RESOLVED that the task force is requested to
22 include the following members:

- 23
24 (1) Chairperson of the Real Estate Commission or their
25 designee, who shall serve as chairperson of the task
26 force;
- 27
28 (2) A representative from the Community Associations
29 Institute;
- 30
31 (3) A representative from the Hawaii Council of Community
32 Associations;
- 33
34 (4) A representative from an organization that advocates
35 for owners, to be selected by the chairperson;
- 36
37 (5) Representatives from three property management
38 companies that operate in more than one county in the
39 State, to be selected by the chairperson;
- 40
41 (6) A representative from the Hawaii Association of
42 REALTORS;



- 1
- 2 (7) A representative from the insurance industry licensed
- 3 to practice in the State who is familiar with
- 4 directors and officers' liability insurance claims and
- 5 policies, to be selected by the chairperson;
- 6
- 7 (8) A member of the Senate appointed by the President of
- 8 the Senate;
- 9
- 10 (9) A member of the House of Representatives appointed by
- 11 the Speaker of the House of Representatives; and
- 12
- 13 (10) Any other stakeholders deemed appropriate and
- 14 necessary by the chairperson; and
- 15

16 BE IT FURTHER RESOLVED that the task force is requested to
17 consider the following:

- 18
- 19 (1) The development of a curriculum to be adopted by the
- 20 Department of Commerce and Consumer Affairs and to be
- 21 completed by each director of a condominium
- 22 association that covers topics including but not
- 23 limited to the association's governing documents,
- 24 directors' fiduciary duties and personal liability
- 25 that may result from any breach of that duty,
- 26 applicable codes of conduct, conflicts of interest,
- 27 the business judgment rule, and confidentially;
- 28
- 29 (2) Whether associations' legal counsel or stakeholder
- 30 groups can perform educational seminars to certify
- 31 directors upon completion of the approved curriculum;
- 32
- 33 (3) Whether funds can be used from the Condominium
- 34 Education Trust Fund to procure a vendor to create and
- 35 administer webinars to educate and certify directors
- 36 based on the approved curriculum;
- 37
- 38 (4) Enforcement remedies for noncompliance; and
- 39
- 40 (5) Any other matters deemed appropriate by the
- 41 chairperson; and
- 42



S.C.R. NO. 204

1 BE IT FURTHER RESOLVED that the task force is requested to
 2 submit to the Legislature its findings, recommendations, and any
 3 proposed legislation, no later than twenty days prior to the
 4 convening of the Regular Session of 2021; and

5
 6 BE IT FURTHER RESOLVED that certified copies of this
 7 Concurrent Resolution be transmitted to the President of the
 8 Senate; Speaker of the House of Representatives; Director of
 9 Commerce and Consumer Affairs; Chairperson of the Real Estate
 10 Commission; Community Associations Institute; Hawaii Council of
 11 Community Associations; Hawaii Council of Associations of
 12 Apartment Owners; and Hawaii Association of REALTORS.

13
 14
 15

OFFERED BY: _____

Thurt Fair

Yudhan J.

Clarence K. Siskibara

[Handwritten signature]

Francis R. Prouse

DKL

[Handwritten signature]

