

STAND. COM. REP. NO. 659

Honolulu, Hawaii
March 5, 2009

RE: H.B. No. 875

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 875 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose of this bill is to enhance options for resolving condominium disputes by extending the Condominium Dispute Resolution Pilot Program (Pilot Program) for another two years.

The Hawaii Independent Condominium and Cooperative Owners and Hawaii Council of Associations of Apartment Owners testified in support of this bill. Several concerned individuals opposed this measure. The Department of Commerce and Consumer Affairs provided comments.

The Pilot Program, set forth in sections 514A-121.5 and 514B-161, Hawaii Revised Statutes, and set to expire on June 30, 2009, was established to facilitate quick and economical resolutions of disputes between condominium owners and their association boards. There is disagreement as to whether the Pilot Program has demonstrated it should be continued. There are also ongoing efforts to find alternatives to the Pilot Program, such as "evaluative mediation." Supporters of this bill want the Pilot Program to continue until a viable alternative has been fully developed. Your Committee is aware of these issues and is moving this bill along for further consideration.

HB875 HSCR CPC HMS 2009-2509



As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 875 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

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



ROBERT N. HERKES, Chair



A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Act 244, Session Laws of Hawaii 2007, is
2 amended by amending section 12 to read as follows:

3 "SECTION 12. This Act shall take effect upon its approval;
4 provided that sections 2, 3, and 4 shall take effect retroactive
5 to July 1, 2006; provided further that section 514A-121.5(b) to
6 (j), Hawaii Revised Statutes in section 2 of this Act shall be
7 repealed on June 30, [~~2009~~] 2011; provided further that cases
8 pending before the office of administrative hearings of the
9 department of commerce and consumer affairs as part of the
10 condominium dispute resolution pilot project established by
11 section 28 of Act 164, Session Laws of Hawaii 2004, on June 30,
12 2006, that may have been dismissed due to the repeal of part VII
13 of chapter 514A, Hawaii Revised Statutes, shall be reinstated
14 and subject to section 514A-121.5, Hawaii Revised Statutes, in
15 section 2 of this Act."

16 SECTION 2. Act 205, Session Laws of Hawaii 2008, is
17 amended by amending section 5 to read as follows:



H.B. NO. 875

1 "SECTION 5. This Act shall take effect upon its approval,
2 and shall be repealed on June 30, [~~2009-~~] 2011."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect on June 29, 2009.

6

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Paul Quinn", is written over a horizontal line.

JAN 26 2009



Report Title:

Condominiums; Dispute Resolution Pilot Project

Description:

Extends the condominium dispute resolution pilot project until 6/30/11.





LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310

P.O. Box 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2009**

Friday, March 27, 2009
10:00 a.m.

TESTIMONY ON HOUSE BILL NO. 875, RELATING TO CONDOMINIUMS

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Rod Maile, and I am the Senior Hearings Officer for the Office of Administrative Hearings, Department and Commerce and Consumer Affairs ("DCCA"). Thank you for the opportunity to present testimony on House Bill No. 875 Relating to Condominiums.

Although DCCA does not believe that the number of hearings that have to date been requested under Act 244, Session Laws of Hawai`i 2007, and Hawai`i Revised Statutes ("HRS") §514A-121.5, warrants the establishment of a permanent condominium dispute resolution contested case process, if there is

Testimony on House Bill No. 875
Friday, March 27, 2009
Page 2

significant support for the extension of the present Condominium Dispute Resolution Pilot Program that was established under HRS §514A-121.5, DCCA would not oppose an extension of the Pilot Program until June 30, 2011.

Thank you for the opportunity to testify on this bill.



Hawaii Council of Associations of Apartment Owners

P.O. Box 726, Aiea, HI, 96701
Phone: 485-8282 Fax: 485-8282
Email: HCAAO@hawaii.rr.com

March 24, 2009

Sen. Rosalyn Baker, Chair
Sen. David Ige, Vice-Chair
Senate Committee on Commerce and Consumer Protection

RE: TESTIMONY IN SUPPORT OF HB 875 RE CONDOMINIUMS
Hearing: Friday, March 27, 2009, 10 a.m., Conf. Rm. #229

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

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO).

HCAAO strongly supports this bill and requests that you pass it out.

When this program was initially adopted, it was a 2-year program; however, because of problems associated with the recodification of HRS 514A, i.e., enactment of HRS 514B in 2 separate years, through no fault of anyone, it was mistakenly repealed when HRS 514A was repealed and had to be corrected. It took two sessions to make the corrections to this program, which was intended to provide quick, economical resolution of disputes between apartment owners and their boards, has never had to chance to be fully tested.

During this past summer, representatives of the stakeholders on this issues, i.e., John Morris (CAI), Philip Nerney (Mediation/Association Atty.), Steve Glanstein (Parliamentarian), Richard Port (HICCO), Cynthia Yee (REC) Tracy Wiltgen (Mediation Center of the Pacific) met several times to try to come to some agreement on a dispute resolution program. There was a consensus among the members of the group that we would jointly ask the Real Estate Commission to establish and fund (from the condo education fund) an evaluative mediation program as an alternative to the existing facilitative

mediation program and to include this program in their budget for the next fiscal year. Part of the funding would be used to train and compensate the mediators.

While I believe that an evaluative mediation program may be preferable to the condominium dispute resolution pilot project ("DCCA Hearings"), it will take some time for that program to be developed and we believe that the DCCA Hearings should remain in place as a "safety net" until the evaluative mediation program has been fully developed.

This committee may hear testimony that very few cases have been taken in by the DCCA Hearing and therefore the pilot program should be not be extended; however, the low numbers are likely a result of the fact that there has not been a pro-active campaign by the State to publicize the availability of this program. Also, there is no additional costs to the State if no cases are actually referred to the DCCA Hearings.

Thank you for the opportunity to testify.

A handwritten signature in cursive script that reads "Jane Sugimura". The signature is written in black ink and is positioned above the printed name and title.

Jane Sugimura
President



HAWAII INDEPENDENT CONDOMINIUM & COOPERATIVE OWNERS
1600 ALA MOANA BLVD. - APT. 3100 - HONOLULU - HAWAII 96815

March 27, 2009

Sen. Rosalyn H. Baker, Chair
Committee on Commerce
and Consumer Protection

Testimony on HB 875 Relating to Condominiums

Dear Senator Baker:

Thank you for this opportunity to testify in **strong support of HB 875** on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO).

HB 875 ensures that the Alternative Dispute Resolution Process will continue as a pilot for two more years.

We are currently exploring other alternatives to the Alternative Dispute Resolution process with other interested parties. One suggestion presented in meetings this past summer has been an Evaluative Mediation process. However, until this process has been tried successfully with condominium disputes, it is essential that the current process remain in place.

The members of our organization urge that you approve HB 875.

Mahalo,

Richard Port

Richard Port, Chair
Legislative Committee

Testimony of Thomas J. Smyth
Before the
Senate Committee on Commerce and Consumer Protection
Friday, March 27, 2009
10:00 am Room 229
on
HB 875 Relating to Condominiums

Chair Baker, Vice Chair Ige, and Members of the Committee:

As a member of the Board of Directors of a Honolulu AOA but speaking for myself, I strongly support HB 875. The bill extends the condominium dispute resolution pilot project, also known as the “Condo Court” for two years.

In previous hearings on this bill, it was noted that relatively few cases had come before this entity and that no one who had used it was testifying as to its value to them or their association. As an officer of my association individually and as a member of the board collectively, I have used this low-cost, relatively quick and straightforward process four times in the last two years. Each time we were successful in responding to what appeared to be vexatious challenges to our governance and decisions by a very small group of our neighbors.

This process may not be the perfect answer to resolution of these often very contentious disputes, but in the absence of any other specific and agreed to approach, this method is far better than committing much time and resources to a full judicial proceeding.

I urge your approval of this important measure.

Thank you for the opportunity to provide testimony.