

STAND. COM. REP. NO.

1375

Honolulu, Hawaii

APR 16 2009

RE: S.C.R. No. 95
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which
was referred S.C.R. No. 95 entitled:

"SENATE CONCURRENT RESOLUTION ENCOURAGING THE REAL ESTATE
COMMISSION TO MODIFY AND ADOPT RULES TO REFLECT CHANGES IN
THE CONDOMINIUM LAW UNDER CHAPTER 514B, HAWAII REVISED
STATUTES, "

begs leave to report as follows:

The purpose of this measure is to encourage the Real Estate
Commission to modify and adopt administrative rules to reflect
changes to the condominium law under chapter 514B, Hawaii Revised
Statutes.

Your Committee received testimony in support of this measure
from the Real Property and Financial Services Section of the
Hawaii State Bar Association, Case Lombardi & Pettit, and four
private citizens. Testimony in opposition to this measure was
received from the Real Estate Commission. Written testimony
presented to the Committee may be reviewed on the Legislature's
website.

Your Committee finds that the administrative rules relating
to condominiums, chapter 107 Hawaii Administrative Rules, have not
been substantially updated since 1981. Your Committee finds that
although the Legislature instituted sweeping changes to the
condominium property regime law by enacting and implementing
chapter 514B, Hawaii Revised Statutes, in its 2004, 2005, and 2006
Regular Sessions, the Real Estate Commission has not begun to

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address any of these changes in its administrative rules, despite the passage of almost three years since the last major statutory changes. Your Committee further finds that in the absence of sufficient and proper administrative rules, the Real Estate Commission currently relies on the practice of issuing nonbinding opinions and grants precedential value to those opinions in interpreting questions, processing applications, and determining effective dates for public reports. Your Committee finds that this practice, especially in the context of the Real Estate Commission's failure to begin the rule-adoption process, is a violation of chapter 91, Hawaii Revised Statutes.

Your Committee notes the testimony of the Real Estate Commission that the Commission is engaged in some activities such as community outreach that may be viewed as preliminary steps in the rulemaking process. However, given the Real Estate Commission's record of lengthy delays and the fact that almost three years have passed since the enactment of chapter 514B, Hawaii Revised Statutes, your Committee respectfully disagrees that the Real Estate Commission is likely to adopt rules in a timely manner without outside intervention. Further, your Committee finds that where the Real Estate Commission is unable or unwilling to timely enact administrative rules necessary to effectuate the purpose of validly enacted statutes, it becomes the role of the Legislature to intervene.

Your Committee has amended this measure by:

- (1) Clarifying that the Real Estate Commission shall move expeditiously toward enacting rules to effectuate the condominium property regime laws; and
- (2) Replacing the target date of December 31, 2009 for the enactment of rules with a target date of the beginning of the Real Estate Commission's next fiscal year for public hearings on proposed rules.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee concurs with the intent and purpose of S.C.R. No. 95, as amended herein, and recommends its adoption in the form attached hereto as S.C.R. No. 95, S.D. 1.



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


ROSALYN H. BAKER, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* <div style="font-size: 1.2em; font-family: cursive;">SCR 95</div>	Committee Referral: <div style="font-size: 1.2em; font-family: cursive;">CPN</div>	Date: <div style="font-size: 1.2em; font-family: cursive;">4/3/2009</div>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended 2312 </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div style="text-align: center;"> <input type="checkbox"/> Hold 2310 </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
IGE, David Y. (VC)	✓			
ESPERO, Will	✓			
GREEN, M.D., Josh				✓
IHARA, Jr., Les	✓			
SAKAMOTO, Norman	✓			
HEMMINGS, Fred				✓
TOTAL	5			2
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature: <div style="font-size: 1.5em; font-family: cursive; margin-top: 10px;">David Y. Ige</div>				
Distribution: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div style="text-align: center;">Original File with Committee Report</div> <div style="text-align: center;">Yellow Clerk's Office</div> <div style="text-align: center;">Pink Drafting Agency</div> <div style="text-align: center;">Goldenrod Committee File Copy</div> </div>				

*Only one measure per Record of Votes