

Honolulu, Hawaii

FEB 13 2017

RE: S.B. No. 121  
S.D. 1

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

Sir:

Your Committees on Commerce, Consumer Protection, and Health and Judiciary and Labor, to which was referred S.B. No. 121 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Broaden the scope of condominium related disputes for which an apartment owner or the board of directors can mandate mediation;
- (2) Lower the additional annual Condominium Education Trust Fund fee to 75 cents times the number of condominiums units included in a registered project or association and discourage future surpluses of the fee;
- (3) Specify that any surplus funds collected for the additional annual Condominium Education Trust Fund to support mediation may be used for any educational purpose provided under section 514B-71(a), Hawaii Revised Statutes; and
- (4) Amend the conditions that mandate mediation and exceptions to mandatory mediation.

Your Committees received testimony in support of this measure from the Hawaii Council of Associations of Apartment Owners;



Hawaii Chapter of the Community Associations Institute, Legislative Action Committee; Associa; and six individuals. Your Committees received testimony in opposition to this measure from the Real Estate Commission. Your Committees received comments on this measure from one individual.

Your Committees find that under existing law, mediation is only nominally mandatory, as there are few incentives and no penalties for any board that refuses to engage in mediation. This measure mandates mediation and provides a simple mechanism to enforce the mandate. Your Committees note that the mandatory mediation proposed by this measure is intended to require parties to resolve condominium-related disputes outside of the courtroom. Your Committees also note that all parties affected by this measure are expected to comply with the mandatory mediation procedures required by law.

Your Committees have heard the concerns raised by the Real Estate Commission regarding expanding the scope of disputes for which a party can initiate a mandatory mediation to include design and construction defect claims. According to the Real Estate Commission, construction defect claims involving developers or contractors generally go to arbitration or litigation and the Commission ordinarily lacks jurisdiction over these entities or individuals. The Commission also expressed concern over the proposed reduction in monies collected into the Condominium Education Trust Fund. The Commission noted that the proposed reduction in funds, combined with the proposed expansion of the subjects permissible for mediation, may make it difficult for the Commission to continue appropriately carrying out its duties. Your Committees understand these concerns and conclude amendments to this measure are necessary.

Your Committees have amended this measure by:

- (1) Expanding the scope of the Condominium Education Trust Fund to cover voluntary binding arbitration between interested parties and specifying requirements for parties who wish to enter into voluntary binding arbitration;
- (2) Deleting language that would have expanded the scope of disputes for which a party could initiate mandatory mediation to include design and construction defect claims;

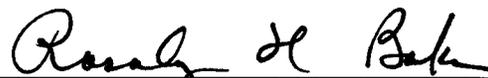


- (3) Deleting language that would have lowered the additional annual Condominium Education Trust Fund fee;
- (4) Deleting language that would have required the Real Estate Commission to anticipate any surplus in the Condominium Education Trust Fund and reduce by that amount of surplus the money collected for registration in the next biennium;
- (5) Clarifying that if evaluative mediation is requested in writing by one party, the other party cannot choose facilitative mediation instead, and any attempt to do so shall be treated as a rejection to mediate;
- (6) Capping the attorneys' fees and costs for a prevailing party at \$1,500, rather than \$200;
- (7) Updating the purpose section; and
- (8) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Commerce, Consumer Protection, and Health and Judiciary and Labor that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 121, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 121, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on  
behalf of the members of the  
Committees on Commerce,  
Consumer Protection, and Health  
and Judiciary and Labor,

  
GILBERT S.C. KEITH-AGARAN, Chair

  
ROSALYN H. BAKER, Chair





