

STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY

TESTIMONY ON
HOUSE BILL 23, RELATING TO CONDOMINIUMS

Before the House Committee on
PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS (PVM)

by

Thomas L. Travis
Administrator, Hawaii Emergency Management Agency (HI-EMA)

Chair Takayama, Vice-Chair Gates, and Members of the Committee:

The Hawaii Emergency Management Agency (HI-EMA) *supports* House Bill 23.

HB 23 requires a disaster preparedness plan to accompany each declaration for a new condominium property regime submitted for recordation after December 31, 2019. It requires each managing agent for each condominium property regime created before January 1, 2020 to prepare a disaster preparedness plan.

While HI-EMA supports HB 23 and recognizes and heartily encourages preparedness plans for all residents statewide, the bill currently does not identify the regulatory framework for disaster preparedness plans.

Note: My comments represent HI-EMA concerns at the state emergency management level only. I would defer to the separate comment/testimonies of the county emergency management agencies, as they would be the jurisdictions impacted by this legislation at the local level.

Thank you for the opportunity to provide this testimony in **SUPPORT** of House Bill 23.

Thomas L. Travis: Thomas.L.Travis@hawaii.gov; 808-733-4300

STATE OF HAWAII
DEPARTMENT OF DEFENSE

LATE

TESTIMONY ON
HOUSE BILL 23, RELATING TO CONDOMINIUMS

PRESENTATION TO
THE HOUSE COMMITTEE ON PUBLIC SAFETY, VETERANS & MILITARY AFFAIRS

BY

MAJOR GENERAL ARTHUR JOSEPH LOGAN
ADJUTANT GENERAL AND DIRECTOR OF HAWAII EMERGENCY MANAGEMENT AGENCY (HI-EMA)
January 28, 2019

Chair Gregg Takayama, Vice Chair Cedric Asuega Gates and members of the House Committee on Public Safety, Veterans & Military Affairs.

I am Major General Arthur Joseph Logan, Adjutant General and Director of State Emergency Management Agency. I am providing written testimony in **SUPPORT** of House Bill (HB) 23.

HB 23 requires a disaster preparedness plan to accompany each declaration for a new condominium property regime submitted for recordation after December 31, 2019, and requires each managing agent for each condominium property regime created before January 1, 2020 to prepare a disaster preparedness plan.

While the Department of Defense supports the intent of HB 23, I would like to note the bill currently does not identify the regulatory framework for disaster preparedness plans. These comments represent DOD-HI-EMA concerns at the state emergency management level only. I defer to the separate comment/testimonies of the county emergency management agencies, as they would be the jurisdictions impacted by this legislation at the local level.

Thank you for the opportunity to provide written testimony that **SUPPORT** of House Bill 23.

HB-23

Submitted on: 1/28/2019 10:57:54 AM

Testimony for PVM on 1/30/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Na Lan	Community Associations Institute LAC	Oppose	No

Comments:

Managing agent may not have the qualification to prepare such a plan. Many associations have created such plans with assistance from other sources and have maintained such plans. Though we agree having a disaster preparedness plan for associations is a good idea, the requirement imposed on managing agent may be misplaced.

HB-23

Submitted on: 1/28/2019 7:02:41 AM

Testimony for PVM on 1/30/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Community Associations Institute	Oppose	Yes

Comments:

I am the Co-Chair and represent the Legislative Action Committee of Community Associations Institute. The committee consists of an equal balance of homeowners, managing agents, lawyers and industry vendors. The committee OPPOSES HB 23.

Managing Agents are real estate brokers and do not possess the technical training or qualifications to prepare disaster plans. The Bill would impose unfair potential liability on the agent.

Furthermore, condos are diverse in size and the scope of work varies widely with the managing agent's contract. Larger associations tend to employ a full staff from a general manager to in some cases security and maintenance staff; none under the supervision of the managing agent. In this case, the managing agent's contract is normally limited to accounting functions. The Managing Agent's contractual duties vary widely from one association to another.

Many other associations are self-managed without a managing agent. Many condos have no residential components such as and for example commercial, office, and industrial, storage, and parking condos among others.

Disaster suggestions and preparation guidelines are already readily available for owners from many current sources.

We OPPOSE HB23 as it imposes requirements on the Managing Agent that agents are not qualified to perform.



O`ahu County Committee on Legislative Priorities (OCCLP)

COMMITTEE ON PUBLIC SAFETY, VETERANS & MILITARY AFFAIRS

Rep. Gregg Takayama, Chair

Rep. Cedric Asuega Gates, Vice Chair

DATE: Wednesday, January 30, 2019

TIME: 10:30 a.m.

PLACE: Conference Room 430 State Capitol

RE: HB 23 Relating to Condominiums

Aloha mai kakou Members of the House Committee on Agriculture:

The O`ahu County Committee on Legislative Priorities (OCCLP) of the Democratic Party of Hawai`i (DPH) hereby submits its testimony in **SUPPORT of HB 23 relating to Condominiums**.

HB 23 requires a disaster preparedness plan to accompany each declaration for a new condominium property regime submitted for recordation after December 31, 2019. HB 23 further requires each managing agent for each condominium property regime created before January 1, 2020, to prepare a disaster preparedness plan.

DPH demands the protection of the people of Hawai`i and their property against natural and man-made disasters. DPH believes in the science of climate change, *inter alia*, affirm human activity as its primary cause and main driver, and support emergency preparedness and planning efforts to mitigate its impacts. This includes investment in early warning systems, emergency management and response systems, and adequate emergency sheltering. *Democratic Party of Hawai`i Platform (2018), p. 20, ln. 28-32.*

For the foregoing reasons, OCCLP supports HB 23 and urges its passage out of the Committee on Public Safety, Veterans and Military Affairs.

Mahalo nui loa
Me ka `oia`i`o

/s/ *Melodie Aduja*

Melodie Aduja

Chair, O`ahu County Committee on Legislative Priorities of the Democratic Party of
Hawai`i

Ph. (808) 258-8889

Email: legislativepriorities@gmail.com

HB-23

Submitted on: 1/26/2019 12:07:47 PM

Testimony for PVM on 1/30/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
R Laree McGuire	Individual	Oppose	No

Comments:

Managing agents are not qualified--do not have the expertise--to draft/prepare such a plan. Moreover, plans already exist from many other qualified sources.

HB-23

Submitted on: 1/28/2019 7:44:14 AM

Testimony for PVM on 1/30/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John Bickel	Individual	Support	No

Comments:

As a Waikiki resident, my building has little planning. We expect to evacuate ,but with increased density, that is laughable.

HB-23

Submitted on: 1/29/2019 11:45:41 AM

Testimony for PVM on 1/30/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul A. Ireland Koftinow	Individual	Oppose	No

Comments:

Dear Representative Gregg Takayama, Chair, Representative Cedric Asuega Gates, Vice Chair, and Members of the Committee:

While disaster preparedness serves the public interest, and while I believe in planning and preparing for potential disasters, I respectfully OPPOSE the language in this measure. This measure will require developers and managing agents to prepare a “disaster preparedness plan” for each condominium association they develop or manage.

The state and the counties are in a better position than developers and managing agents to provide information and guidance on disaster preparedness. Each of the counties as well as the Hawai'i Emergency Management Agency of the State of Hawai'i (“**HIEMA**”) provides much of the information outlined in this measure. HIEMA provides the public with recommendations and guidance on preparing emergency kits, food storage, and potential locations where alternative shelter may be provided in the event of a disaster (which are often not announced until a disaster occurs). For example, HIEMA's website includes informational brochures, a “Fact Sheet” for planning for individuals with disabilities, access, or functional needs, as well as a link to the Homeowner's Handbook to Prepare for Natural Hazards by Dennis J. Hwang and Darren Okimoto (which is 65 pages long and can be downloaded from: http://dod.hawaii.gov/hiema/files/2016/03/webhomeownershandbooknatural_hazards_0.pdf).

It would be more efficient if the counties and HIEMA provided to the public a general condominium association disaster preparedness plan with guidance and recommendations for evacuation, alternative shelters, emergency kits, and food storage. This plan could be maintained and updated by HIEMA, and managing agents could forward the same to association members.

In addition, there are many developers and managing agents which develop or manage projects in Hawai'i. To create a disaster preparedness plan, developers, managing agents, and condominium associations will likely need to retain experts to assist with the preparation of each plan. The costs for managing agents to prepare such plans will be passed on to association members, and will result in higher assessments, fees, or

special assessments. This measure will also result in many different disaster preparedness plans which may be inconsistent with or contradict information that is provided by the state and counties. To achieve the intended purpose of this measure, it would be best if this information was provided directly from the state and counties to managing agents and condominium associations so they could pass this information on to residents.

This measure is also problematic because it could be misconstrued to impose extremely burdensome and unfair obligations on condominium associations. For example, the measure could be misconstrued to require that condominium associations **provide** residents with alternative shelter and food in the event of a disaster. This would be very costly for associations, especially for larger projects which have hundreds of units. As such, this measure should not pass in its present form.

If this measure is passed, this measure should make condominium association's immune from liability with respect to a disaster preparedness plan. Section 514B-B, subsection (d) of this measure makes managing agents "immune" from liability, but is silent as to condominium associations. This is very unfair to associations and their members. If this measure passes, section 514B-B, subsection (d) of this measure should instead say that "a managing agent that prepares a disaster preparedness plan pursuant to this section and the association for which the disaster preparedness plan was prepared shall be immune from suit and liability . . . on the part of the managing agent or association," so that associations are given the same immunity.

Lastly, the definition of "disaster," found in section 514B-B, subsection (e) of this measure, is broad. It could mean a number of emergencies which would result in loss of life or property (e.g., active shooter emergencies, cyber-theft and data breaches, infectious diseases, nuclear threats, radiological emergencies, terrorism, floods, hurricanes, earthquakes, or fires, and false threats (i.e., the false missile alert on January 13, 2018)). Condominium associations are not in the best position to provide information on how to respond to many of these types of disasters. If this measure is not made narrow in its scope, a disaster preparedness plan will be costlier to prepare, and will have more potential to contradict information provided by the state and counties.

Thank you for taking the time to consider this testimony. I respectfully urge your Committee to not pass this measure.

HB-23

Submitted on: 1/29/2019 12:08:07 PM

Testimony for PVM on 1/30/2019 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Anderson	Individual	Oppose	No

Comments:

Dear Representative Gregg Takayama, Chair, Representative Cedric Asuega Gates, Vice Chair, and Members of the Committee:

I am an attorney with Anderson Lahne & Fujisaki LLP A Limited Liability Law Partnership. My firm represents a number of condominium associations in Hawaii.

While disaster preparedness serves the public interest, and while I believe in planning and preparing for potential disasters, I respectfully OPPOSE the language in this measure. This measure will require developers and managing agents to prepare a “disaster preparedness plan” for each condominium association they develop or manage.

The state and the counties are in a better position than developers and managing agents to provide information and guidance on disaster preparedness. Each of the counties as well as the Hawai'i Emergency Management Agency of the State of Hawai'i (“HIEMA”) provides much of the information outlined in this measure. HIEMA provides the public with recommendations and guidance on preparing emergency kits, food storage, and potential locations where alternative shelter may be provided in the event of a disaster (which are often not announced until a disaster occurs). For example, HIEMA's website includes informational brochures, a “Fact Sheet” for planning for individuals with disabilities, access, or functional needs, as well as a link to the Homeowner's Handbook to Prepare for Natural Hazards by Dennis J. Hwang and Darren Okimoto (which is 65 pages long and can be downloaded from: http://dod.hawaii.gov/hiema/files/2016/03/webhomeownershandbooknatural_hazards_0.pdf).

It would be more efficient if the counties and HIEMA provided to the public a general condominium association disaster preparedness plan with guidance and recommendations for evacuation, alternative shelters, emergency kits, and food storage. This plan could be maintained and updated by HIEMA, and managing agents could forward the same to association members.

In addition, there are many developers and managing agents which develop or manage projects in Hawai'i. To create a disaster preparedness plan, developers, managing agents, and condominium associations will likely need to retain experts to assist with

the preparation of each plan. The costs for managing agents to prepare such plans will be passed on to association members, and will result in higher assessments, fees, or special assessments. This measure will also result in many different disaster preparedness plans which may be inconsistent with or contradict information that is provided by the state and counties. To achieve the intended purpose of this measure, it would be best if this information was provided directly from the state and counties to managing agents and condominium associations so they could pass this information on to residents.

This measure is also problematic because it could be misconstrued to impose extremely burdensome and unfair obligations on condominium associations. For example, the measure could be misconstrued to require that condominium associations provide residents with alternative shelter and food in the event of a disaster. This would be very costly for associations, especially for larger projects which have hundreds of units. As such, this measure should not pass in its present form.

If this measure is passed, this measure should make condominium association's immune from liability with respect to a disaster preparedness plan. Section 514B-B, subsection (d) of this measure makes managing agents "immune" from liability, but is silent as to condominium associations. This is very unfair to associations and their members. If this measure passes, section 514B-B, subsection (d) of this measure should instead say that "a managing agent that prepares a disaster preparedness plan pursuant to this section and the association for which the disaster preparedness plan was prepared shall be immune from suit and liability . . . on the part of the managing agent or association," so that associations are given the same immunity.

Lastly, the definition of "disaster," found in section 514B-B, subsection (e) of this measure, is broad. It could mean a number of emergencies which would result in loss of life or property (e.g., active shooter emergencies, cyber-theft and data breaches, infectious diseases, nuclear threats, radiological emergencies, terrorism, floods, hurricanes, earthquakes, or fires, and false threats (i.e., the false missile alert on January 13, 2018)). Condominium associations are not in the best position to provide information on how to respond to many of these types of disasters. If this measure is not made narrow in its scope, a disaster preparedness plan will be costlier to prepare, and will have more potential to contradict information provided by the state and counties.

Thank you for taking the time to consider this testimony. I respectfully urge your Committee to not pass this measure.

Sincerely,

M. Anne Anderson