

ACT 53

H.B. NO. 2197

A Bill for an Act Relating to Condominiums.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Presently, the law does not provide boards of directors broad authority on behalf of their associations to install solar energy devices, even though associations can benefit from installing solar energy or wind energy devices on the common elements to reduce Hawaii's dependence on fossil fuels. Some companies are now proposing to lease areas of the common elements from associations to install solar energy or wind energy devices, thereby reducing the association's energy costs and dependence on fossil fuels.

The purpose of this Act is to amend sections 514A-13.4 and 514B-140, Hawaii Revised Statutes, to specifically provide boards of directors with the authority to install or allow the installation of solar energy or wind energy devices on the common elements under appropriate circumstances to further reduce Hawaii's dependence on energy generated from fossil fuels.

SECTION 2. Section 514A-13.4, Hawaii Revised Statutes, is amended to read as follows:

“~~§514A-13.4~~ Telecommunications equipment[-] and renewable energy devices. (a) Notwithstanding any other provisions to the contrary in this chapter, in the declaration of any project, or in the bylaws of any association:

- (1) The board of directors of an association shall have the authority to install or cause the installation of antennas, conduits, chases,

cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the apartment or apartments for the use of which the limited common element is reserved; and

- (2) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, elements, and easements appurtenant to each apartment or to be a structural alteration or addition to any building different in any material respect from the plans of the project filed in accordance with section 514A-12; provided that no such installation shall directly affect any non-consenting apartment owner.

(b) Notwithstanding any other provision to the contrary in this chapter, in the declaration of any project or in the bylaws of any association:

- (1) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and
- (2) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, elements, and easements appurtenant to each apartment or to be a structural alteration or addition to any building different in any material respect from the plans of the project filed in accordance with section 514A-12.

(c) Notwithstanding any other law to the contrary in this chapter, or any provisions in the declaration of any project or in the bylaws of any association:

- (1) The board of directors of an association shall have the authority to install or cause the installation of, or lease or license the common elements for the installation of solar energy devices and wind energy devices on the common elements of the project; provided that solar or wind energy devices shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for which use of the limited common element is reserved; and
- (2) The installation of solar energy devices and wind energy devices on the common elements of the project by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, or easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with section 514A-12; provided that the installation does not directly affect any nonconsenting unit owner.

~~(e)~~ (d) As used in this section:

“Directly affect” means the installation of television signal distribution and telecommunications equipment, solar energy devices, or wind energy devices in a manner which would specially, personally, and adversely affect an individual apartment owner in a manner not common to the apartment owners as a whole.

“Solar energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment as it is sold to consumers cannot be used as a solar device without incorporation with other equipment, it shall be installed in place and ready to be operational to qualify as a “solar energy device”; provided further that “solar energy device” shall not include skylights or windows.

“Television signal distribution” and “telecommunications equipment” shall be construed in their broadest possible senses [~~in order~~] to encompass all present and future forms of communications technology.

“Wind energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of wind energy for producing electricity or reducing the use of other types of energy that are dependent upon fossil fuel for generation; provided that if the facility, equipment, apparatus, or the like cannot be used as a wind energy device without incorporation with other equipment, it shall be installed in place and ready to be operational to qualify as a “wind energy device.”¹

SECTION 3. Section 514B-140, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding any other [~~provisions~~] law to the contrary in this chapter or any provisions in any declaration or bylaws:

(1) Regarding the installment of telecommunications equipment:

(A) The board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is reserved; and

(B) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B-33 and 514B-34; provided that no [~~such~~] installation shall directly affect any nonconsenting unit owner; [~~and~~]

(2) Regarding the abandonment of telecommunications equipment:

(A) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and

(B) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit or

to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B-33 and 514B-34[-]; and

(3) Regarding the installation of solar energy devices and wind energy devices:

(A) The board shall have the authority to install or cause the installation of, or lease or license comment¹ elements for the installation of solar energy devices and wind energy devices on the common elements of the project; provided that solar or wind energy devices shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for which use of the limited common element is reserved; and

(B) The installation of solar energy devices and wind energy devices on the common elements of the project by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, or easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B-33 and 514B-34; provided that the installation does not directly affect any nonconsenting unit owner.

(e) As used in this subsection:

“Directly affect” means the installation of television signal distribution and telecommunications equipment, solar energy devices, or wind energy devices in a manner which would specially, personally, and adversely affect [a] an individual unit owner in a manner not common to the unit owners as a whole.

“Solar energy device” means the same as in subsection (c).

“Television signal distribution” and “telecommunications equipment” shall be construed in their broadest possible senses [~~in order~~] to encompass all present and future forms of communications technology.

“Wind energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of wind energy for producing electricity or reducing the use of other types of energy that are dependent upon fossil fuel for generation; provided that if the facility, equipment, apparatus, or the like cannot be used as a wind energy device without incorporation with other equipment, it shall be installed in place and ready to be operational to qualify as a “wind energy device.”¹

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

SECTION 5. This Act shall take effect upon its approval.

(Approved April 23, 2010.)

Note

1. So in original.