

ACT 18

H.B. NO. 1746

A Bill for an Act Relating to Condominiums.

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

SECTION 1. The legislature finds that many older condominium projects in Hawaii operate with only a single meter measuring the aggregate consumption of utilities such as gas, water, and electricity for all units within the condominium project. Consequently, utility expenses are paid for as a common expense based on each unit's undivided interest in the condominium, rather than individual units' actual utility usage.

The legislature finds that this method of apportioning utility costs is unfair to both unit owners and the condominium association. A unit owner faces no consequences for wasteful energy consumption, such as leaving lights or air conditioning on at all times. Unit owners with vacant units, such as part-time residents or owners of unoccupied rental units, are also at a disadvantage. For example, a three-bedroom unit with a higher undivided interest than a studio apartment will pay a higher utility cost, regardless of whether the unit is occupied or vacant. The legislature further finds that wasteful or excessive utility use results in higher costs for the association when utility costs are paid for as a common expense.

The legislature also finds that the patent unfairness of common utility metering in condominium associations was addressed by Act 176, Session Laws of Hawaii 1977, and Act 93, Session Laws of Hawaii 2005, which added new sections to chapters 514A and 514B, Hawaii Revised Statutes, respectively, to require separate metering of nonresidential and residential units and to allow individual metering of condominium units. However, the requirement for separate monitoring of nonresidential units only applies to projects for which construction commenced after 1978. Condominiums constructed before 1978 are not required to adhere to those laws. The legislature finds that recent technology permits the individual metering of utilities in many instances for a reasonable cost regardless of the age or construction design of the condominium project.

The purpose of this Act is to permit a condominium board of directors to authorize the installation of utility meters to measure utility use by individual units; provided that the condominium association bears the cost of installing the utility meters.

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SECTION 2. Section 514A-15.5, Hawaii Revised Statutes, is amended to read as follows:

“§514A-15.5 Metering of utilities. (a) Notwithstanding the provisions of section 514A-15, commercial apartments in mixed-use projects containing apartments for both residential and commercial use~~[-, the construction of which commences after December 31, 1977,]~~ shall have a separate meter, or calculations shall be made, or both, to determine the use by the commercial apartments of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage and the cost of ~~[such] the~~ utilities shall be paid by the owners of ~~[such] the~~ commercial units; provided that the apportionment of ~~[such] the~~ charges among owners of commercial apartments shall be done in a fair and equitable manner as set forth in the declaration or bylaws.

Notwithstanding any provision to the contrary in this chapter or in a project's declaration or bylaws of an association of apartment owners, the board of directors may authorize the installation of separate meters to determine the use by each of the residential and commercial apartments of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage; provided that the cost of installing the meters shall be paid by the association.

(b) ~~[Subject to]~~ Notwithstanding any approval requirements and spending limits contained in the declaration or bylaws of an association of apartment owners, the board of directors of any association of apartment owners may authorize the installation of meters to determine the use by ~~[the] each~~ residential ~~[and] or~~ commercial ~~[apartments]~~ apartment of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage~~[-]~~; provided that the cost of installing the meters shall be paid by the association. The cost of metered utilities shall be paid by the owners of ~~[such apartments]~~ each apartment based on actual consumption and may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to these owners for the cost of metered utilities.”

SECTION 3. Section 514B-42, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§514B-42]]~~ Metering of utilities. (a) Units in a project that includes units designated for both residential and nonresidential use shall have separate meters, or calculations shall be made, or both, as may be practicable, to determine the use by the nonresidential units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage, and the cost of ~~[such] the~~ utilities shall be paid by the owners of the nonresidential units; provided that the apportionment of the charges among owners of nonresidential units shall be done in a fair and equitable manner as set forth in the declaration or bylaws. ~~[The requirements of this subsection shall not apply to projects for which construction commenced before January 1, 1978.]~~

Notwithstanding any provision to the contrary in this chapter or in a project's declaration or bylaws the board may authorize the installation of separate meters to determine the use by each of the residential and commercial units of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage; provided that the cost of installing the meters shall be paid by the association.

(b) ~~[Subject to]~~ Notwithstanding any approval requirements and spending limits contained in a project's declaration or bylaws, ~~[a] the~~ board of any association may authorize the installation of meters to determine the use by ~~[the] each~~ individual ~~[units]~~ unit of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage~~[-]~~; provided that the cost

of installing the meters shall be paid by the association. The cost of metered utilities shall be paid by the owners of [~~the units~~] each unit based on actual consumption and, to the extent not billed directly to the unit owner by the utility provider, may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to owners for the cost of metered utilities.”

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 12, 2012.)