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# Sunrise Report: Condominium Commission

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A Report to the  
Governor  
and the  
Legislature of  
the State of  
Hawai'i

Report No. 08-07  
March 2008



**THE AUDITOR**  
STATE OF HAWAI'I

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## Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai'i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

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2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
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# OVERVIEW

## *Sunrise Report: Condominium Commission*

Report No. 08-07, March 2008

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### Summary

In Senate Concurrent Resolution No. 160, Senate Draft 1, the 2007 Legislature requested that the Auditor conduct a “sunrise” analysis of Senate Bill No. 1837, to create a condominium commission in the Department of Commerce and Consumer Affairs (DCCA). The Hawai‘i Licensing Reform Act (Chapter 26H, Hawai‘i Revised Statutes) requires that bills proposing the regulation of previously unregulated professions or vocations be referred to the Auditor for sunrise analysis prior to enactment. The Auditor is to assess whether the proposed regulation is necessary to protect the health, safety, or welfare of consumers and whether the regulation is consistent with other regulatory policies in Chapter 26H, HRS. In addition, the Auditor must examine the probable effects of the proposal and assess alternative forms of regulation.

Hawai‘i’s Condominium Property Act today consists of two laws: the old law found in Chapter 514A, HRS, for projects in existence before July 1, 2006; and the new law codified in Chapter 514B, HRS, for projects built after July 1, 2006. The Real Estate Branch of the DCCA and the Real Estate Commission are responsible for the administrative and regulatory functions of the condominium laws in both chapters. Entities governed by the condominium laws include unit owners, associations of apartment owners, boards of directors, developers, managing agents and resident managers. There are several ways for these entities to resolve disputes involving the interpretation or enforcement of the laws or a condominium’s governing documents—declaration, bylaws, and house rules. These include: filing complaints with DCCA’s Regulated Industries Complaints Office (RICO), mediation, arbitration, administrative hearings under the Condominium Dispute Resolution Pilot Program popularly called condo court, and circuit court action.

In 2004 the Legislature established the condo court pilot program under Chapter 514B, HRS, which is organized and administered by DCCA’s Office of Administrative Hearings (OAH), to hear condominium disputes not resolved through mediation. The OAH reports that there is not a significant demand for hearings through the condo court program. Until its scheduled sunset on July 1, 2009, it remains to be seen whether the demand continues to be insignificant or can benefit condominium owners as a less costly and more informal mechanism to resolve condominium disputes than judicial proceedings.

In 1988, to avoid the creation of a condominium commission, the Legislature established the first temporary, full-time condominium specialist position to assist consumers with information, advice, and referrals relating to condominium laws in the state. The current regulatory structure provides for three permanent, full-time condominium specialists, who assist the condominium associations with registration requirements, as well as provide education, advice, and referrals to condominium owners, associations and boards of directors, to resolve disputes.



We found that the Real Estate Commission has been proactive in its efforts to promote education and research in the field of condominium management, registration and real estate for the benefit of the public, and implement the regulatory framework for those required to be registered under Chapters 514A and 514B, HRS. We found no complaints about the work of the commission's Condominium Review Committee and the condominium specialists. We uncovered no evidence of harm or potential risk to condominium owners that would result absent the creation of a condominium commission. Even though self-governance has been eroded with changes in the recodified condominium law that address management and governance issues, the existing regulatory structure is adequate and there are many avenues of relief available for dispute resolution to protect the entities governed by the law.

Senate Bill No. 1837 does not meet the criteria for the establishment of a condominium commission to oversee the implementation of the Condominium Property Act codified in Chapter 514B, HRS, and to enforce policies relating to condominiums in the state. We were presented no documented evidence of harm or risk to consumers resulting from the sweeping changes to the condominium law recodified in Chapter 514B, HRS, which went into effect on July 1, 2006. As proposed the bill creates a commission without appropriate authority. There are no provisions that address the condominium commission's jurisdiction, powers, duties and functions. The Real Estate Commission notes that the bill "provides for no changes to the overall original policy of the condominium law as to association governance and management, which. . . is based [on] self-enforcement by owners, multiple dispute resolution process, and minimal government authority." The bill is also problematic for the DCCA as it impacts its mission and work. For example, there is no funding mechanism, and the Real Estate Branch and the Real Estate Commission would still need to perform the administrative and regulatory functions for entities governed under Chapter 514A, HRS, since the bill only covers entities governed under the new condominium law.

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## Recommendations and Response

We recommend that Senate Bill No. 1837, 2007 Regular Session not be enacted. The DCCA opted not to provide a response.

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Hawai'i

Conducted by

The Auditor  
State of Hawai'i  
and  
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Consultant

Submitted by

**THE AUDITOR**  
STATE OF HAWAI'I

Report No. 08-07  
March 2008

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## Foreword

This “sunrise” report about a proposed condominium commission was prepared in response to a provision in the Hawai‘i Regulatory Licensing Reform Act, Chapter 26H, Hawai‘i Revised Statutes, that requires the Auditor to evaluate proposals to regulate previously unregulated professions or vocations.

In Senate Concurrent Resolution No. 160, Senate Draft 1, of the 2007 legislative session, the Legislature requested an analysis of Senate Bill No. 1837 that proposes to create a condominium commission in the Department of Commerce and Consumer Affairs. This evaluation, conducted by Millicent Y. H. Kim, consultant, presents our findings and recommendation on whether the proposed regulation complies with policies in the licensing reform law and whether a reasonable need exists to establish a condominium commission to protect the health, safety, and welfare of the public.

We wish to express our appreciation to the Department of Commerce and Consumer Affairs and other organizations and individuals whom we contacted during the course of the evaluation.

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State Auditor

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# Chapter 1

## Introduction

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This report on the proposed regulation to create a condominium commission responds to a “sunrise” provision of the Hawai‘i Regulatory Licensing Reform Act—Chapter 26H, Hawai‘i Revised Statutes (HRS). The sunrise provision requires that, prior to enactment, legislative bills proposing regulation of previously unregulated professions or vocations be referred to the Auditor for analysis. The Auditor is to assess whether the proposed regulation is necessary to protect the health, safety, or welfare of consumers and is consistent with other regulatory policies in Chapter 26H, HRS. In addition, the Auditor is to examine the probable effects of the proposed regulation and assess alternative forms of regulation. Senate Bill No. 1837 of the 2007 legislative session would establish a condominium commission in the Department of Commerce and Consumer Affairs (DCCA). The bill proposed the creation of a condominium commission to: (1) oversee the implementation and regulation of Chapter 514B, HRS, and (2) develop, implement, and enforce policies relating to condominiums in the state. The Legislature specifically requested an analysis of this bill in Senate Concurrent Resolution No. 160, Senate Draft 1, of the 2007 legislative session.

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## Background

To better understand issues relating to the need for a condominium commission, we provide some background on the recodification of Hawai‘i’s condominium laws and the proposed regulation.

### ***Hawai‘i’s Condominium Property Act consists of two laws—Chapters 514A, and 514B, HRS***

Legislation governing condominium property regimes in Hawai‘i was first enacted in 1961 out of concern for the protection of Hawai‘i’s consumers as owners of real estate under the condominium form of property ownership, where individual members hold title to a specific unit and an undivided interest as a “tenant-in-common” with other unit owners for common elements. The condominium law was intended to protect purchasers through adequate disclosures and the management of the ongoing affairs of the condominium community.<sup>1</sup> The 1961 Legislature was concerned about protecting Hawai‘i’s consumers from “unfortunate experiences in cooperative apartment buying” and needed to develop controls to protect the buying public, while bolstering public confidence in purchasing condominium property. As a result, the 1961 Legislature provided for the regulation of condominium projects by the Hawai‘i Real Estate Commission (requiring the registration of projects by developers and the issuance of public reports before offering any condominium units for sale). The Legislature also provided for the



internal administration of condominium projects; however, the condominium management provisions were minimal. In 1977, the Legislature enacted Act 98, Session Laws of Hawai‘i 1977 to repeal the Horizontal Property Regimes Act, Chapter 514, HRS, and replace it with the Condominium Property Regimes Act, Chapter 514A, HRS, which was essentially a restatement of Chapter 514, HRS, without substantive changes.

Hawai‘i’s condominium law is a “*land ownership law, a consumer protection law, and a community governance law*. It is not a land use law [since] it does not govern what structures may be built on real property. . . .”<sup>2</sup> After a recodification process that began in 2001, Hawai‘i’s Condominium Property Act today consists of two condominium laws: the old law found in Chapter 514A, HRS, which applies to condominium projects in existence before July 1, 2006; and the new condominium law codified in Chapter 514B, HRS, which applies to condominium projects built after July 1, 2006.

Under Chapter 514B, HRS, a condominium is defined “. . . as real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. . . .” The act provides for the registration, administration, and operation of condominiums and the protection of condominium purchasers under laws applicable to real estate transactions and condominium development. All unit owners of a condominium project belong to an association of apartment owners (AOAO) headed by an elected board of directors. The board has most of the power and responsibility for managing operations for the property. Property in the context of the condominium law means belonging to an AOAO. The operation of a property includes: administration, fiscal management, and the maintenance, repair, and replacement of, and improvements to the common elements.

Entities governed by Chapters 514A and 514B, HRS, include:

- Apartment or unit owners, defined as “the person owning, or the persons owning jointly or in common, a unit and its appurtenant common interest.” A unit owner also includes a lessee of a unit.
- Associations of apartment owners, defined as the “unit owners’ association organized under Section 514B-102, HRS, or prior condominium property regime statutes,” and includes all the unit owners acting as a group according to bylaws and declaration for a condominium project.
- Boards of directors, defined as “the body, regardless of name, designated in the declaration or bylaws to act on behalf of the association” of apartment owners.

- Developers, defined as “a person who undertakes to develop a real estate condominium project. . . .”
- Managing agents, defined as “any person retained, as an independent contractor for the purpose of managing the operation of the property.”
- Resident managers, defined as “any person retained as an employee by the association to manage, on-site, the operation of the property.”

***Real Estate Commission is responsible for recodification of Chapters 514A and 514B, HRS***

In 2001 the Real Estate Commission embarked on an ambitious effort to rewrite Chapter 514A, HRS, at the direction of the 2000 Legislature. The Legislature described Hawai‘i’s condominium property law as “unorganized, inconsistent, and obsolete in some areas, and micromanages condominium associations[;]. . . [t]he law is also overly regulatory, hinders development and ignores technological changes and the present day development process.”<sup>3</sup>

The Real Estate Commission was directed to recodify existing laws over a three-year period working with a Blue Ribbon Advisory Committee. Draft legislation was requested by 2003 to update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law. The recodification process included three drafts. The commission specifically limited its efforts to recodifying Hawai‘i’s condominium property regimes law.

Following the 2003 legislative session, the commission continued to work with all stakeholders in the community and the Blue Ribbon Advisory Committee to refine Recodification Draft #2, which resulted in a Public Hearing Discussion Draft for hearings held in all four counties.

One of the principles guiding the Real Estate Commission’s draft legislation process was that the recodification should not grow the size or cost of government. The commission believed the recodification supported the “fair and efficient functioning of condominium communities while appropriately balancing the rights and responsibilities of individual unit owners and the association of unit owners as a whole.” The philosophy guiding the condominium management, operation, and governance provisions throughout the recodification process was “minimal government involvement and self-governance by the condominium community.”<sup>4</sup>

The recodification of Chapter 514A, HRS, was completed with the enactment of Act 164, Session Laws of Hawai‘i 2004, Act 93, Sessions Laws of Hawai‘i 2005, and Act 273, Session Laws of Hawai‘i 2006.

Chapter 514A, HRS, was repealed and codified in Chapter 514B, HRS, by Act 164, Session Laws of Hawai‘i 2004. Although Chapter 514A, HRS, was scheduled for repeal on July 1, 2006 by Act 93 of the 2005 legislative session, the repeal was deleted by the Legislature with the enactment of Act 273, Session Laws of Hawai‘i 2006.

A fair amount of confusion occurred about how the recodification applied to existing condominiums. The 2006 Legislature in Act 273 clarified which provisions applied automatically to existing condominiums—most notably the powers of the association and board of directors, governance, operations and alternative dispute resolution provisions relating to the management of condominiums found in Part VI, *Management of Condominiums*, Chapter 514B, HRS.

For those provisions that did not automatically apply to existing condominiums, the 2006 Legislature included a provision in Chapter 514B, HRS, that allows condominium associations to “opt-in” by amending their governing documents to conform to the provisions that have a substantial benefit to the association.<sup>5</sup>

In 2007, by Act 244, Session Laws of Hawai‘i 2007, the Legislature amended three parts of Chapter 514A, HRS, to apply to condominium projects in existence before July 1, 2006, and included provisions for definitions in Part I, management in Part V, and alternative forums for dispute resolution in Part VII.

***Principles of self-governance underscore condominium laws***

The Condominium Property Act establishes the basic framework for condominium governance. Despite the recodification, the basic principles relating to the management of condominiums and the roles and responsibilities of those who manage condominiums remain the same. Condominium owners are supposed to run their own project, with little government interference. This means that the owners, associations, boards and management are to enforce the laws and rules and to resolve disputes through discussion, mediation, arbitration, and if necessary, litigation.<sup>6</sup>

The system of governance is based on three documents: (1) the declaration, (2) the bylaws, and (3) house rules. The declaration, which must be recorded in the State Bureau of Conveyances and the Land Court, describes the land and the buildings and the common elements. Common elements are the areas of a property in which owners have an undivided interest. The bylaws govern the operation of the property. They provide for such matters as the election of the board of directors, the directors’ terms, their powers and responsibilities, and their compensation. House rules usually govern only the use of the common elements.<sup>7</sup>

The two elements of condominium self-governance are: 1) education—so boards of directors are aware of their roles and responsibilities and owners have sufficient information to ensure that the boards carry out their functions correctly; and 2) dispute resolution—so that owners have a reasonably priced and effective means of resolving the disputes that will inevitably arise when property owners are forced to co-exist in the confines of a condominium environment.<sup>8</sup>

***Alternative dispute resolution mechanisms available***

As discussed further in Chapter 2, under the old and new condominium laws, there are several forums available to condominium owners, an association, and board of directors to resolve disputes involving interpretation or enforcement of the condominium laws or a condominium's governing documents—declaration, bylaws and house rules. These forums include: arbitration, mandatory mediation, administrative hearing under the Condominium Dispute Resolution Pilot Program, and circuit court action.

Under the old condominium law, an owner's remedy to enforce the provisions covering access to information and governing documents was to file a court action. Enforcement through court action was not realistic to many because of the high cost of litigation; the nature of the dispute itself was insufficient to justify the expense; and cases took months or years to resolve.<sup>9</sup>

In an attempt to settle internal disputes involving owners, associations, boards of directors, and managing agents, the 1984 Legislature amended Chapter 514A, HRS, to provide for arbitration as a quicker and less costly remedy.

Complaints involving the interpretation, application, or enforcement of Chapters 514A, HRS, or 514B, HRS, can be brought either to mediation or submitted to arbitration, by one or more unit owners, an association, its board, or managing agent. Certain disputes are not subject to mandatory mediation or arbitration including actions seeking equitable relief involving property damage; actions to collect assessments; personal injury claims or actions against an association, board, or one or more directors for amounts in excess of \$2,500, if insurance coverage is not available.

Mediation must be completed within two months from the date it begins and cannot continue beyond the timeframe unless the parties agree. Parties to a dispute are required to participate in mediation before requesting an administrative hearing under the Condominium Dispute Resolution Pilot Program. Mandatory arbitration also does not apply to disputes involving the Real Estate Commission; a mortgagee; and the

developer, general contractor, subcontractor or design professional unless that person is also a unit owner, a director, or managing agent.

***Impetus for Senate Bill No. 1837***

The purpose of a condominium commission as stated in Senate Bill No. 1837 is to: (1) ensure a smooth transition of provisions of Chapter 514B, HRS, the Condominium Property Act of 2004, as well as to assist in the resolution of the ambiguities that still exist; (2) clarify certain provisions in the current law; and (3) generally implement and enforce policies relating to condominiums in the state.

Among those who testified in support of the proposal were individual condominium owners, the Hawaii Council of Association of Apartment Owners (HCAAO), and the Hawaii Independent Condominium and Cooperative Owners (HICCO). The proponents complained that:

- the Real Estate Commission gives less attention to condominium issues than to the licensing and investigation of real estate licensees; and
- a condominium commission is needed to ensure that the rights of condominium owners would get the direct attention of a specific body charged with the responsibility of watching over the proper functioning of condominiums.

The Real Estate Commission and the Community Associations Institute (CAI), Hawaii Chapter opposed the creation of a condominium commission for a variety of reasons including the lack of assurance that a commission would provide sound policy or interpretation of the condominium laws, that it would create a forum only for those few owners who cannot abide by the restrictions of community living, that it runs counter to the principle of self-governance, and that the proposed language is too vague.

The House Committee on Consumer Protection and Commerce, in its report on Senate Concurrent Resolution No. 160, Senate Draft 1, found that the Real Estate Commission is responsible for enforcing the laws, rules, and policies governing the rights and responsibilities of persons owning and residing in condominiums. The committee also found that:

[S]ince the Real Estate Commission's primary mission is to license and regulate real estate professionals, and since approximately twenty percent of Hawaii's population resides within condominiums, it may behoove the Real Estate Commission to transfer all condominium duties to a separate condominium commission whose sole responsibility would be to govern condominium laws, rules and policies.<sup>10</sup>

## Objectives of the Analysis

1. Determine whether there is a reasonable need for a condominium commission to regulate entities governed by the Condominium Property Act of 2004 to protect the health, safety, or welfare of the consumer.
2. Assess the probable effects of regulation, specifically the effects of creating a condominium commission.
3. Make recommendations as appropriate, based on our findings, including alternate regulatory and enforcement frameworks to the proposed creation of a condominium commission.

## Scope and Methodology

To assess the need to create a condominium commission, as proposed in Senate Bill No. 1837, we applied the criteria set forth in Section 26H-2, HRS, of the Hawai‘i Regulatory Licensing Reform Act. The Legislature established these policies to ensure that regulatory programs are established only when needed to protect consumers. Since regulation is an exercise of the State’s police power, it should not be imposed lightly.

## *Policies and principles of regulation in Hawai‘i*

The consumer protection purpose of regulation is clearly articulated in Section 26H-2, HRS. These policies state that:

- The State should regulate professions and vocations only where reasonably necessary to protect consumers;
- Regulation should protect the health, safety, and welfare of consumers and not the profession;
- Evidence of abuses should be given great weight in determining whether a reasonable need for regulation exists;
- Regulation should be avoided if it artificially increases the costs of goods and services to the consumer, unless the cost is exceeded by potential dangers to the consumer;
- Regulation should be eliminated when it has no further benefit to consumers;
- Regulation should not unreasonably restrict qualified persons from entering the profession; and
- Aggregate fees for regulation and licensure must not be less than the full costs of administering the program.

In addition to regulatory policies in Chapter 26H, HRS, we used additional criteria for analysis, including whether:

- The incidence or severity of harm based on documented evidence is sufficiently real or serious to warrant regulation;
- No alternatives provide sufficient protection to consumers (such as federal programs, other state laws, marketplace constraints, private action, or supervision); and
- Most other states regulate the occupation for the same reasons.

### ***Burden of proof***

In assessing the need for regulation and the specific regulatory proposal, we placed the burden of proof on proponents of the measure to demonstrate the need for regulation. We evaluated their arguments and data against the above criteria. We examined the regulatory proposal and assessed whether the proponents provided sufficient evidence for regulation. In accordance with sunrise criteria, even if regulation *may* have *some* benefits, we recommend regulation only if it is *demonstrably* necessary to protect the public.

### ***Types of regulation***

We scrutinized the appropriateness and the regulatory approach taken by the proposed legislation. Three approaches are commonly taken to occupational regulation:

- *Licensing*, the most restrictive form, confers the legal right to practice to those who meet certain qualifications. Penalties may be imposed on those who practice without a license. Licensing laws usually authorize a board that includes members of the profession to establish and implement rules and standards of practice.
- *Certification* restricts the use of certain titles (for example, social worker) to persons who meet certain qualifications, but it does not bar others who offer such services without using the title. Certification is sometimes called *title protection*. Government certification should be distinguished from professional certification, or credentialing, by private organizations. For example, social workers may gain professional certification from the National Association of Social Workers.
- *Registration* is used when the threat to the public health, safety, or welfare is relatively small or when it is necessary to determine the impact of the operation of an occupation on the public. A registration law simply involves having practitioners enroll with

the State so that a roster or registry is created and the State can keep track of practitioners. Registration may be mandatory or voluntary.

In addition to assessing the need for regulation and the specific legislative proposal, we considered the appropriateness of other regulatory alternatives. We also assessed the cost impact on the proposed regulatory agency and the regulated group.

To accomplish the objectives of our analysis, we searched the literature on previous reports and studies on changes to Hawai'i's condominium laws, on condominium governance, including relevant regulation in other states, and Hawai'i's statutes and rules. We conducted interviews with representatives of the Hawaii Independent Condominium and Cooperative Owners, the Hawaii Council of Association of Apartment Owners, the Community Associations Institute Hawaii Chapter, the Real Estate Commission, and the Department of Commerce and Consumer Affairs' Office of Administrative Hearings, and the department's Professional and Vocational Licensing Division, Real Estate Branch.

Our assessment was conducted from July 2007 to January 2008.



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# Chapter 2

## Creation of a Condominium Commission is Unnecessary

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This chapter presents the findings and recommendations on the proposal to create a condominium commission to regulate entities governed by Hawai'i's Condominium Property Act recodified in Chapter 514B, Hawai'i Revised Statutes (HRS). The criteria in Chapter 26H, HRS, the Hawai'i Regulatory Licensing Reform Act, warrant state regulation only when reasonably necessary to protect consumers. We found no problems with the existing regulatory structure to warrant the creation of a condominium commission despite the recodification of the Condominium Property Act. Both the old and new condominium laws provide adequate alternative dispute resolution mechanisms to protect the entities governed by the act. We conclude that a condominium commission is unnecessary, and the bill as proposed is too skeletal and should not be enacted.

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### Summary of Findings

1. We found no problems with the current regulatory structure to warrant the creation of a condominium commission despite the recent recodification of the Condominium Property Act.
2. Even though condominium self-governance has eroded with changes in the law that address management issues, a condominium commission is not necessary since the existing regulatory structure appears efficient and provides adequate alternative dispute resolution mechanisms to protect the entities governed by the Condominium Property Act.
3. The proposed legislation is flawed and cannot be implemented, as Senate Bill No. 1837 does not define the specific regulatory functions, responsibilities, jurisdiction, and authority to act.

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### Little Evidence of Harm

The Hawai'i Regulatory Licensing Reform Act states that regulation should be undertaken only when necessary to protect the health, safety, and welfare of consumers. Senate Bill No. 1837 establishes a condominium commission to oversee the implementation of the Condominium Property Act codified in Chapter 514B, HRS, and to enforce policies relating to condominiums in the state. The Real Estate Branch of the Department of Commerce and Consumer Affairs and the

Real Estate Commission are responsible for the administrative and regulatory functions of the Condominium Property Act under Chapters 514A and 514B, HRS. We found no evidence that consumers are being harmed as a result of the oversight by the Real Estate Commission to implement the recent changes in the recodified law and educate the stakeholders about changes that went into effect on July 1, 2006.

***Proponents have not met their burden of proof***

The proponents of Senate Bill No. 1837 have the burden to show that a condominium commission is necessary for the protection of condominium owners. Proponents of the bill include condominium owners. No other entities impacted by the recodified condominium law, namely condominium associations, boards, managing agents, resident managers, developers, real estate licensees, and prospective condominium purchasers, were among the proponents of Senate Bill No. 1837.

Our primary concern is whether there is evidence of harm or risk that jeopardizes the health, safety, and welfare of consumers to warrant protection through the establishment of a condominium commission separate from the Real Estate Commission. The national Council on Licensure, Enforcement and Regulation guides us to ask whether the absence of a condominium commission presents a clear and present danger to the public's health, safety, and welfare. Our review of testimony in support of a condominium commission revealed a sentiment that less attention was paid to condominium issues than the business of licensing and investigating real estate professionals by the Real Estate Commission. We also encountered the belief that staff dealt primarily with the board of directors and management companies, rather than addressing the concerns of condominium owners. Our assessment of condominium self-governance built into the management provisions of the recodified condominium laws uncovered no evidence of harm or potential risk to condominium owners that would result absent the creation of a condominium commission.

***No risk to consumers despite recodified condominium laws***

We found no risks to consumers despite the recodified condominium laws. We sought information as to the problems with the Real Estate Commission's implementation of the recodified condominium laws. The responses we received did not raise any serious problems. Instead, a concern was raised that the commission especially helped owners on the elected board of directors attend "free of charge" the educational seminars presented by the Community Association Institute (CAI), which is subsidized by the Condominium Education Trust Fund. This perception was based on the fact that associations pay for the elected board members' registration fee, while owners must use their own funds for registration.

Other concerns raised included: the inconvenience of having free seminars scheduled on weekdays, rather than on weekends, the unavailability of updated information booklets about the rights and responsibilities of condominium associations, and the disclaimer given by condominium specialists to consult an attorney for legal advice.

While the outcome desired by proponents may be an entity that focuses attention on the rights of condominium owners and serves as a watchdog, we are unable to recommend passage when the proponents have not provided documented evidence of harm that is sufficiently real or serious resulting from the recodified condominium laws to warrant the creation of a condominium commission.

***No problems implementing the Condominium Property Act***

We found that the Hawai‘i Real Estate Commission has been proactive in its efforts to promote education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public, and implement the regulatory framework for those required to be registered under Chapters 514A and 514B, HRS. For example, in the last two years, since the new law took effect, the commission sponsored seminars on each of the major islands to answer questions and inform the condominium community of the major changes made by the new law. These seminars were in addition to the seminars sponsored by the commission through the CAI Hawaii Chapter—the local chapter of a national condominium organization that presents six to eight seminars on various topics each year. In 2007, after the passage of several laws clarifying provisions under the new condominium law, the commission held a summit of various stakeholders in the condominium community seeking input on how to better educate condominium owners, boards, and managers.

***Overview of Hawai‘i Real Estate Commission’s role and responsibility to promote education about changes to the state’s condominium laws***

The Hawai‘i Real Estate Commission, a licensing and regulatory entity, housed in the Department of Commerce and Consumer Affairs, Real Estate Branch of the Professional and Vocational Licensing Division, has authority over the regulatory program found in both the old and new condominium laws. The commission oversees almost 20,000 real estate licensees statewide, of which 14,500 are active licenses. In 2007, the commission reported a slight decrease of active licenses from 2006, indicative of the market. In 2006 and 2007, the commission oversaw the registration of 19 condominium hotel operators, and 1,546 condominium associations in 2006 compared to 1,609 in 2007. This represents approximately 26 percent of Hawai‘i’s housing population living in condominiums compared with 54 percent in single family homes.<sup>1</sup>

The commission is a consumer protection body composed of nine members appointed by the governor established under Chapters 467, HRS, and 514B, HRS. The commission's 2007 annual report identifies five members who are condominium owners, and one member who is an owner and occupant.

The commission's purpose is to:

- Protect the general public in its real estate transactions;
- Promote the advancement of education and research in the field of real estate for the benefit of the public and those licensed under the provisions of Chapter 467, HRS, and the improvement and more efficient administration of the real estate industry; and
- Promote education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under Chapters 514A and 514B, HRS.<sup>2</sup>

The commission sponsors a number of condominium programs and activities carried out in coordination with the Department of Commerce and Consumer Affairs, Real Estate Branch, as shown in Exhibit 2.1.

### **Real Estate Commission administers the condominium education funds**

The commission has authority over the Condominium Education Trust Fund under Chapter 514B, HRS, and the Condominium Management Education Fund under Chapter 514A, HRS, to spend moneys that:

- Promote education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under Chapters 514A, and 514B, HRS;
- Promote the improvement and more efficient administration of condominium associations; and
- Finance the expeditious and inexpensive procedures for resolving condominium association disputes.

The funds' revenues are derived from fees paid every odd-numbered year by condominium unit owners through their associations, and condominium developers who pay a one-time fee to the trust fund for each unit in the project before sales can start. The fees are set by agency rules. The current amount is \$4 every other year for condominium unit

owners. The Condominium Review Committee is responsible for preparing and reviewing an annual expenditure plan and an annual report to the Legislature.

The department's Professional and Vocational Licensing Division, Real Estate Branch, assists the commission in administering the funds, by collecting fees from the developer's final public report, and registration and re-registration fees paid by each condominium project or AOA that are due on or before the condominium's registration due date. The Real Estate Branch has a staff that consists of: a supervising executive officer, and executive officer, eight administrative support staff, three real estate specialists, and three condominium specialists.

### **Condominium Review Committee oversees the implementation and enforcement of the Condominium Property Act post-recodification**

The responsibility for insuring a smooth transition and implementation of the two co-existing condominium laws rests with the Condominium Review Committee—a standing committee of the Real Estate Commission that holds monthly public meetings in which only condominium issues are presented, discussed, examined, and considered. The committee consists of all the commissioners, with a designated chair and vice chair, who are assisted by three condominium specialists.

In 2005, a substantial portion of the Condominium Review Committee's work focused on completing the recodification of Chapter 514A, HRS. In 2006, the committee prepared to implement the Condominium Property Act codified in Chapter 514B, HRS, scheduled to take effect on July 1, 2006, Act 273, Session Laws of Hawai'i 2006. The implementation efforts included:

- Fine tuning the new condominium law to clarify the provisions applicable to the condominiums that existed prior to July 1, 2006, in Act 273, SLH 2006; developing curriculum and power point presentations for use in a statewide educational effort targeted to inform and educate the condominium community impacted by the new condominium law; advertising and delivering statewide, a free three hour seminar entitled "The New Condominium Law Chapter 514B, HRS – Building on the Past," with a volunteer faculty comprised of representatives from the condominium development and governance community and real estate industry; participating in speakerships about the new law aired on Hawai'i Public Television;
- Developing developer's public report forms, information packets, registration processes and procedures to implement the

registration of condominium projects; delivering a seminar about the proposed condominium project registration forms, processes, and procedures;

- Updating the commission’s website with information about the new condominium laws and making the developer’s public report forms and information packet available online.

### **1988 Legislature avoids need for condominium commission with a condominium specialist position**

In 1988, “to satisfy the need. . . for a *condominium commission*,” the Legislature established the first temporary, full-time condominium specialist—an attorney hired by the director of Commerce and Consumer Affairs for the purpose of assisting consumers with information, advice, and referrals relating to condominium laws in the state.<sup>3</sup> Originally, the temporary position was created “to avoid the creation of a condominium commission and with the hope that the position would solve a number of problems (sought to be solved each year by proposed legislation) by disseminating information about the present condominium laws and by taking appropriate action in certain cases.”<sup>4</sup>

In 1989, the Legislative Reference Bureau (LRB) conducted a study requested by the 1988 Legislature and triggered by the high volume of bills that were introduced under the old condominium law, Chapter 514A, HRS.<sup>5</sup> The LRB studied various problems concerning condominium governance, particularly the adequacy of access to information about condominium laws, regulations, maintenance fees, and checks and restraints to prevent abuse of power by the elected board of directors. The study found that “[a]lthough the Hawai’i Real Estate Commission has jurisdictional responsibility over condominiums, it [was] unclear whether it [had] any real enforcement authority over most issues relating to condominium operations or management.” Because it appeared that the Real Estate Commission lacked clear rulemaking and enforcement authority over the management provisions in the old condominium law, the LRB recommended:

- Creating an agency, either as an arm of the Real Estate Commission or as a separate division within the Department of Commerce and Consumer Affairs, with broad powers and duties to enforce all aspects of the condominium law, and sufficient staff and resources to perform effectively;
- Adopting an approach modeled after Florida’s Condominium Act, which provided broad enforcement powers to its Bureau of Condominiums, including, the ability to make rules, conduct comprehensive investigations, issue subpoenas, institute

enforcement proceedings in its own name or on behalf of others, issue cease and desist orders, and impose civil penalties; or, at the very least,

- Converting from temporary to permanent the condominium specialist position, and providing clear and realistic duties, authority, and sufficient funding for support staff and equipment.

Of the three recommendations, the Legislature converted from temporary to permanent the condominium specialist position.

***Three full-time condominium specialists staff the Real Estate Commission***

We found the current regulatory structure provides for three condominium specialists, who assist condominium associations with the registration requirements, as well as provide education, advice, and referrals to condominium owners, associations and boards of directors, to resolve disputes through mediation, arbitration, judicial proceedings and a contested case hearings pilot program. The minimum qualifications of a condominium specialist include administrative, professional, and analytical work experiences, which demonstrate an ability to plan and coordinate activities and deal effectively with others. Although the first condominium specialist hired by the department in 1988 was a licensed attorney, a law license is not required. These permanent, full-time positions are exempt from civil service and funded by the Condominium Management Education Fund and Condominium Education Trust Fund.

The major duties and responsibilities of the condominium specialists include:

- Assist consumers with information, advice, and referral relating to condominium laws in the state;
- Review the condominium laws enforced by the Department of Commerce and Consumer Affairs and Real Estate Commission, in order to recommend, as appropriate, changes to those laws including the drafting of proposed legislation;
- Initiate complaint, where appropriate, to discipline a licensee or entity involved.

***There is no evidence of harm by commission and condominium specialists***

Hawai'i law requires that, when determining whether regulation is necessary, evidence of abuses by the service providers are to be accorded great weight. We found no complaints about the work of the Condominium Review Committee and three condominium specialists tasked with responding to questions and problems associated with the



condominium laws. In 2007, the condominium specialists received for registration 248 new condominium projects created after July 1, 2006. The commission reports that in 2007, the condominium specialists responded to: 1388 walk-ins, 12,535 written requests or applications, 2940 emails and 8157 phone calls. The specialists also assisted the committee in individualizing and delivering statewide the commission-developed three hour free seminar entitled, “The New Condominium Law Chapter 514B, HRS – Building on the Past.” In response to requests for interpretations, the committee issued 12 informal, non-binding interpretations of the provisions of the new condominium laws and made them available to interested parties directly and on-line at the commission’s website.

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## **Even Though Condominium Self-Governance Has Eroded, the Current Regulatory Structure Is Efficient**

While the burden to prove harm rests with the proponents of the bill, we found no evidence that condominium owners need protection from the current regulatory program. We found the Real Estate Commission has tried to remain neutral in implementing its education and dispute resolution plans, consistent with the principle of self-governance. According to one condominium legal expert, the commission has created “stability” in a volatile area.<sup>6</sup> Despite the principle of self-governance that applies to condominium communities, the management provisions in Part VII of Chapter 514A, HRS, and Part VI of Chapter 514B, HRS, are comprehensive and cover:

- The powers and duties of an association and the members of the board of directors, the limitations on their powers, and the registration and re-registration requirements and payment of fees;
- The governance provisions that address requirements for the elections of the board of directors, annual association meetings, minutes, voting and proxies, and board meetings and minutes;
- The operations of the property and provisions for managing agents, association employees, management contracts, responsibilities of the association to maintain the common elements, and unit owners’ responsibility for the maintenance and repairs within the unit;
- Alterations subject to governing documents requiring board approval;
- Tort and contract liability for injuries or property damage held by the developer; limitation on liability for the association, directors, unit owners relating to an elderly unit owner;

requirements for property insurance; an association's rights over fiscal matters such as annual assessment fees, the operating budget and reserves, handling and disbursement of funds, audits and financial statements, lease rent renegotiation, records to be maintained, and made available; pets subject to a condominium's bylaws;

- Attorney's fees for delinquent assessments and expenses of enforcement; and
- Alternative dispute resolution provisions for mediation, arbitration and court action.

Even though self-governance has been eroded with changes in the recodified condominium law that address management and governance issues, we found the existing regulatory structure is adequate and that there are many avenues of relief available for dispute resolution to protect the entities governed by the Condominium Property Act.

### ***Complaints are few***

We reviewed complaints filed with the department's Regulated Industries Complaints Office (RICO), those referred to mediation by the Real Estate Commission and RICO, and hearing requests filed with the Office of Administrative Hearings. We compared the number of disputes with complaints filed two years before changes in the Condominium Property Act took effect. Since the passage of Act 273, Session Laws of Hawai'i 2006, we found the number of complaints to be insignificant, and records of disputes referred for mediation and hearings before the Office of Administrative Hearings were far below the 30 case limit currently allowed under the Condominium Dispute Resolution Pilot Program.

### **Real Estate Commission subsidizes mediation services**

We found that mediation services, which are available on every island, are probably the least expensive and least time-consuming means of resolving disputes between condominium owners and their board of directors, as long as the parties involved are willing to be reasonable and compromise. It has the benefit of bringing together the parties in a dispute to communicate through an experienced mediator as a means of resolving their differences.

The Real Estate Commission has delegated its authority to investigate complaints brought for violations of the condominium laws to RICO before referring the complaint to mediation. The commission coordinates a joint complaint/mediation program with RICO subsidized by the condominium education funds. The entities participating in the mediation are typically a unit owner and the association's board of

directors. Both parties are responsible for their own costs when participating in mediation unless the parties agree that one party shall pay all or a portion of the costs. If a party refuses to participate in mediation, the laws provide that a court may take the refusal into consideration when awarding expenses, costs, and attorney's fees.

For each fiscal year, the commission budgets \$20,000 to cover expenses to contract for mediation services. The commission's expenses for mediation services cost \$10,450 in fiscal year 2005, and \$8000 each in fiscal years 2006 and 2007. The costs for each mediation include an initial fee of \$50 for set up and intake; \$100 for contacting all parties to participate in mediation; and \$100 for completing mediation, whether or not an agreement is reached.

The mediation services are available on each island contracted by the Real Estate Commission and funded by the condominium education funds. These include: the Mediation Center of the Pacific, Mediation Services of Maui, Big Island Mediation, West Hawai'i Mediation Center, the Island of Hawai'i YMCA Ku'ikahi Mediation Center; and Kaua'i Economic Opportunity.

### **Few cases referred to mediation**

Between June 1, 2006 and December 31, 2006, a total of 12 cases were referred to mediation throughout the state. Of the 12 cases, two reached agreement, three reached no agreement and could proceed to the administrative hearing procedure, and seven were closed either due to withdrawal by the owner or board of director's inaction. RICO handled five cases for the same period. One case was mediated, three were closed without mediating, and one was closed as the board of directors declined to participate.

Between January 1, 2007 and May 31, 2007, there were a total 11 cases involving condominium disputes, five of the 11 cases were mediated, and six were closed without mediation. All of the cases were disputes between owners and their board of directors. The disputes resolved through mediation involved issues about privacy and fines, pets, interpretation of house rules, use of units, and assessment. The disputes where mediation was not successful involved issues about pets, privacy, voting policies, and outstanding maintenance fees.

### ***2004 Legislature establishes Condominium Dispute Resolution Pilot Project***

In 2003, the Hawaii Independent Condominium and Cooperative Owners (HICCO) suggested a condominium court during the public hearings on the recodification draft. HICCO advocated for the establishment of a condominium court as the "real solution to condominium problems. . . along the lines of a small claims court, where most disputes can be resolved quickly and at reasonable costs. . . ."

The Real Estate Commission did not recommend establishing a condominium court as part of the recodification process based on its guiding principle that the recodification should not grow the size or cost of government. Instead, the commission recommended that the Legislative Reference Bureau “study ways to improve dispute resolution in condominium communities,” including the establishment of a condominium court.<sup>7</sup>

Rather than direct the LRB to conduct the study, the 2004 Legislature included provisions for a Condominium Dispute Resolution Pilot Program in the recodified Chapter 514B, HRS. The pilot program, popularly known as condo court, is organized and administered by the Department of Commerce and Consumer Affairs’ Office of Administrative Hearings to hear disputes not resolved through mediation.

### **Condo court supplements existing dispute resolution processes**

The condo court program is intended to supplement, not replace, existing condominium dispute resolution processes (negotiation, mediation, arbitration, and court action). No moneys are expended from the condominium education funds for the hearings held by the Office of Administrative Hearings. A request for hearing can be filed 30 days from the final day of mediation by the board of directors of a registered association or a unit owner that is a member of a registered association. Both the party filing a request for hearing and the party responding must pay a \$25 fee to the Office of Administrative Hearings. The Office of Administrative Hearings can accept no more than 30 requests for hearings per year.

### **Demand for condo court is insignificant**

In December 2004, the department could not evaluate the efficacy of the pilot program since it had only been in operation for six months and “particularly in light of the requirement that before a request for hearing can be filed with the CDR Pilot Program, that the matter must first be submitted to mediation.”<sup>8</sup> Since no requests for hearing had been filed with the pilot program in 2004, the Legislature enacted Act 92, Session Laws of Hawai‘i 2005, to remove restrictions on the types of disputes that could be adjudicated administratively, thus allowing the hearings officer to include any issue that had been the subject of mediation. In 2006, the Legislature extended the two-year pilot program from June 30, 2006 to June 30 2009, by Act 277, Session Laws of Hawai‘i 2006.

Questions arose about the Office of Administrative Hearings’ jurisdiction to hear matters involving condominium projects existing prior to July 1, 2006 and governed under Chapter 514A, HRS. The 2007 Legislature

passed Senate Bill No. 1654, Senate Draft 1, House Draft 1, to clarify that the mediation and the administrative hearing dispute resolution procedures codified in Part VI of Chapter 514B, HRS, applied to condominiums existing before July 1, 2006. Act 244, Session Laws of Hawai'i 2007, clarifies that the mediation and administrative hearing dispute resolution procedures under section 514B-161, HRS, apply and are available to: (1) condominiums existing before July 1, 2006; and (2) cases pending before the Department of Commerce and Consumer Affairs, Office of Administrative Hearings under the pilot program. The Office of Administrative Hearings is required to reinstate any cases that may have been dismissed due to the repeal of provisions in the old condominium law repealed by Act 164, Session Laws of Hawai'i 2004. Following clarification in the law, the Office of Administrative Hearings has placed 14 questionable cases on "conditional" status until these requests for hearing are refiled and reinstated as required by law.

The Office of Administrative Hearings' annual reports on the Condominium Dispute Resolution Pilot Program show that requests for hearings increased from two in 2005 to ten in 2006. Since July 1, 2007 five requests for hearing have been filed. The nature of nearly all disputes involved management, governance, and operational issues that varied between owners and their board of directors, between the condominium association and general manager, and between the condominium association and owner. The department reported that there was "not yet a significant demand for the kind of services provided by the CDR Pilot Program."<sup>9</sup> Until its scheduled sunset on July 1, 2009, it remains to be seen whether the demand for hearings continues to be insignificant or can benefit condominium owners by serving as a less costly and more informal mechanism to resolving condominium disputes as an alternative to seeking remedies through costly judicial proceedings.

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## **Proposed Regulation Is Flawed**

Although Senate Bill No. 1837 provides for the purpose, composition, appointing authority, and terms of appointment, there are no provisions that address the jurisdiction, powers, duties and functions of a condominium commission. The bill as proposed raises questions about the structure of a condominium commission and its impact on the operations of the Real Estate Branch responsible for staffing the Real Estate Commission.

### ***Powers and duties are undefined***

The role of the condominium commission needs to be defined. A commission is defined as a "group of people officially authorized to perform certain duties or functions."<sup>10</sup> Under Chapter 514B, HRS, only the Real Estate Commission has authority to perform certain duties and functions. There are no provisions in Senate Bill No. 1837 describing

the condominium commission's powers, rights, duties or functions. For example, it is unclear whether the condominium commission is supposed to oversee the provisions relating to condominium development or take control over condominium governance.

**Authority rests with  
Real Estate  
Commission**

Senate Bill No. 1837 is silent about the Real Estate Commission's powers and duties and lacks specificity as to which powers should be removed and placed with the proposed commission. The Real Estate Commission's authority to act is provided in Section 514B-61, HRS, under general powers and duties. The commission has the power to make, amend, adopt, and repeal rules under Chapter 91, HRS; assess fees; conduct investigations; issue cease and desist orders; bring an action to court; prescribe forms and procedures for submitting information to the commission; and prescribe the contents of documents required for submission. The bill provides no clear guidance as to how the lines between the two commissions are to be drawn. It raises the question as to how the condominium commission is supposed to implement the condominium laws or enforce policies relating to condominiums.

The Real Estate Commission notes that the bill "provides for no changes to the overall original policy of the condominium law as to association governance and management, which. . . is based [on] self-enforcement by owners, multiple dispute resolution processes, and minimal government authority." A condominium commission with rulemaking and hearing authority over condominium governance could run the risk of micromanaging the affairs of condominium associations instead of allowing condominium owners to manage and operate their own project with minimal government interference. Micromanaging runs counter to the principle of self-governance. One condominium attorney believed that a commission with broader powers than the Real Estate Commission "may lead to even greater micromanagement of condominium associations in Hawai'i." Concerns were raised that "a condominium commission might be a magnet for individuals with an agenda rather than people with concerns about how a regulatory system affects thousands of condominiums of different sizes and needs throughout the State."<sup>11</sup>

It was difficult for the commission to provide meaningful comment when asked to assess the need for a condominium commission. Instead, the commission posed the following questions:

- Is the intent of the proposed legislation to transfer the minimal authority of the [Real Estate Commission] to the proposed [condominium commission]?
- Is the intent of the proposed legislation to change the overall

policy of the condominium law and provide for more government authority and administration? For example, is it the intent of the proposed legislation to have the proposed [condominium commission] enforce each condominium's declaration, bylaws, and house rules? And provide authority to legally interpret and provide opinion on each condominium's declaration, bylaws and house rules?

- Will the proposed [condominium commission] have authority over the pilot Condominium Dispute Resolution program administered by the [Department of Commerce and Consumer Affairs' Office of Administrative Hearings]?
- Is the purpose of the proposed [condominium commission] for government to have full authority over all sections of the condominium law dealing with association governance and management?
- Is the intent of the proposed legislation to transfer only the existing minimal authority over association governance and management to [a condominium commission] with [the Real Estate Commission] to maintain its own separate authority over condominium development and public reports?

***Proposed legislation is problematic for the DCCA***

We asked the Department of Commerce and Consumer Affairs for its assessment on the impact of creating a condominium commission as proposed in Senate Bill No. 1837. The department's views were consistent with those of the Real Estate Commission's since the significant regulatory functions related to condominiums are performed by the Real Estate Branch. The supervising executive officer of the Real Estate Branch could not provide a cost estimate for establishing a condominium commission as it would depend on the scope of the commission's services and responsibilities.

The department provided observations about Senate Bill No.1837, as it impacts its mission and work, including the cost of creating and staffing a condominium commission, as follows:

- There is no funding mechanism. Because DCCA is special funded, the condominium commission would have to be special funded. There are no provisions for the collection of fees from any source, such as condominium associations and licensees, that would allow the condominium commission to be self-sustaining;

- The specific regulatory functions, responsibilities, jurisdiction, or authority that the condominium commission would use to fulfill its statutory duties are not delineated;
- Since the condominium commission as proposed covers entities governed under the new condominium law, the Real Estate Branch and the Real Estate Commission would need to continue to perform the administrative and regulatory functions for the entities governed by the old condominium law until Chapter 514B, HRS, fully replaces Chapter 514A, HRS; and
- It is unclear whether the condominium commission would supersede the jurisdiction of the forums available for dispute resolution, or whether the other forums would be required to defer to the condominium commission issues relating to the implementation and regulation of entities covered under the new condominium laws.

The department concluded that there was “insufficient empirical data and a lack of compelling evidence from the condominium community” that establishes an “unequivocal” need for the proposed condominium commission, or provides a basis from which to develop the structure and authority for the proposed commission to implement the condominium laws under Chapter 514B, HRS.

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## Conclusion

Our analysis shows that Senate Bill No. 1837 of the 2007 legislative session does not meet the criteria for the establishment of a condominium commission to regulate entities governed by the new condominium law. We were presented no documented evidence of harm or risk to consumers resulting from the sweeping changes to the condominium law recodified in Chapter 514B, HRS, which went into effect on July 1, 2006. We conclude that a condominium commission is not necessary, and Senate Bill No. 1837, as proposed, creates a commission without appropriate authority. Therefore, no benefits could be derived from disrupting the existing regulatory and enforcement framework and alternative dispute resolution mechanisms in place, including the Condominium Dispute Resolution Pilot Project scheduled to sunset on July 1, 2009.

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## Recommendation

We recommend that Senate Bill No. 1837, 2007 Regular Session not be enacted.



## **Exhibit 2.1 Condominium Review Committee Program of Work and Activities**

- Advice, education and referral—responds and provides information to inquiries from the condominium community, developers, consumers, licensees, government officials, organizations, interested others and the public, via telephone, walk-ins, faxes, written, emails and through the commission’s website;
- Participate in public presentations to provide information and updates regarding condominium issues in Hawai‘i;
- Make condominium projects and developers’ public reports available electronically for public viewing and copying on the commission’s website;
- Research, develop, publish and distribute quarterly, the Hawaii Condominium Bulletin, to all registered Association of Apartment Owners (AOAO), Condominium Managing Agents (CMA), and Condominium Hotel Operators (CHO), also available on the commission’s website;
- Administer condominium mediation and arbitration program including procurement of providers; coordinate joint complaint/mediation program with the Regulated Industries Complaints Office (RICO); and provide educational seminars for condominium boards and owners about alternative dispute resolution and mediation;
- Collect information and statistics for education and annual reports;
- Monitor condominium dispute resolution pilot program at DCCA Administrative Hearings Office;
- Administer condominium association registration including applications, review, policies procedures appeals, subpoenas, request for records under Office of Information Practices (OIP). Study, report, implement, maintain and update electronic computerized registration and listing of all AOAO contact information on the commission’s website;
- Produce condominium seminars and symposiums for

condominium community through contract with various providers. Administer Condominium Education Fund (CEF) subsidies for commission approved seminars;

- Condominium Review Committee Educational Advisory group—a volunteer group to review, recommend, assist in development, update and administration of condominium education related projects;
- Condominium managing agents’ registration—administer the registration requirements and the registration of corporations authorized as trust companies;
- Condominium hotel operator registration—licensing, registration, certification requirements working with licensing branch;
- Rule making—research, evaluate and develop rule amendments for the rulemaking process;
- Meetings—plan, coordinate and conduct monthly Condominium Review Committee meetings, including schedules and agendas on the website;
- Participate in government, legislative activities. Respond to requests from the Legislature to prepare and distribute annual reports, review legislative acts and resolutions;
- Interact with other organizations regarding information exchange and concerns;
- Neighbor island outreach—hold meetings on neighbor islands in collaboration with local boards, condominium associations; provide condominium specialist “office for a day” with RICO neighbor island offices to work with condominium community, developers, county officials, consumer purchasers and other professionals to provide advice and assistance relating to condominium issues;
- Administer condominium education funds. Prepare monthly and annual financial statements;
- Consumer education program for prospective condominium unit purchasers and new owners;
- Rule making through coordination with the licensing administrator;

- Conduct periodic workshops for condominium consultants for purposes of orientation and information;
- Maintain condominium reference library and engage in staff and commissioners development. Technology and website maintenance; and
- Prepare formal and informal nonbinding opinions of condominium laws and association documents (by laws, declaration, house rules) with deputy attorney general.

Source: Department of Commerce and Consumer Affairs, *2006 and 2007 Annual Reports, Real Estate Commission*

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## Notes

### Chapter 1

1. Hawai'i Real Estate Commission, *Final Report to the Legislature Recodification of Chapter 514A, Hawai'i Revised Statutes (Condominium Property Regimes) In Response to Act 213, Section 4 (SLH 2000) December 31, 2003*, Hawai'i Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs.
2. Gordon M. Arakaki, "Recodifying Hawai'i's Condominium Property Regimes Law," Condominium Recodification Attorney, Real Estate Commission, State of Hawai'i, July 16, 2002.
3. Act 213, Session Laws of Hawai'i 2000.
4. Arakaki, "Recodifying Hawai'i's Condominium Property Regimes Law," p. 3.
5. Director's Guide to Hawai'i Community Association Law, prepared by Ekimoto & Morris, LLC, Honolulu, Hawai'i, 2006.
6. Hawai'i, The Auditor, *Sunrise Analysis: Condominium Association Managers*, Report No. 05-10, Honolulu, December 2005, p. 2.
7. Ibid.
8. Interview with the first condominium specialist, John Morris, Esq., Ekimoto & Morris, LLC, October 27, 2007.
9. Hawai'i Legislative Reference Bureau, "Condominium Governance—An Examination of Some Issues," Report No. 4, March 1989, p. 22.
10. House Standing Committee Report No. 2115 on Senate Concurrent Resolution No. 160, Senate Draft 1, Regular Session of 2007.

### Chapter 2

1. Hawai'i Department of Business, Economic Development and Tourism, *State of Hawai'i Data Book 2006* Table 21.18, citing the Housing Policy Study, 2006, prepared for the Hawai'i Housing Finance and Development Corporation and Housing Officers/Administrators for Honolulu, Maui, Hawai'i, and Kaua'i Counties, by SMS Research & Marketing Services, Inc., February 2007.

2. Hawai‘i, Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division, Real Estate Branch, *2006 Annual Report Real Estate Commission*.
3. Act 278, Session Laws of Hawai‘i 1988.
4. Hawai‘i, Legislative Reference Bureau, *Condominium Governance—an Examination of Some Issues*, Report No. 4, March 1989, p. 53.
5. Ibid.
6. Interview of John Morris, Esq., Ekimoto & Morris, LLC, the first condominium specialist hired by the Department of Commerce and Consumer Affairs in 1988 in accordance with Act 278, Session Laws of Hawai‘i, 1988, dated October 27, 2007.
7. Hawai‘i Real Estate Commission, *Final Report to the Legislature Recodification of Chapter 514A, Hawai‘i Revised Statutes (Condominium property Regimes) In Response to Act 213, Section 4 (SLH 2000) December 31, 2003*, Hawai‘i Real Estate Commission, Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs, December 31, 2003, p. 27.
8. Hawai‘i Department of Commerce and Consumer Affairs, *Condominium Dispute Resolution Pilot Program, Report to the 2005 Legislature*, State of Hawai‘i, December 2004.
9. Hawai‘i Department of Commerce and Consumer Affairs, *Condominium Dispute Resolution Pilot Program, Report to the 2006 Legislature*, State of Hawaii, December 2005.
10. American Heritage Dictionary, <http://education.yahoo.com/reference/dictionary>
11. Richard Ekimoto, Esq., Ekimoto & Morris, LLC, [www.Hawai‘icondolaw.com/blog](http://www.Hawai‘icondolaw.com/blog)

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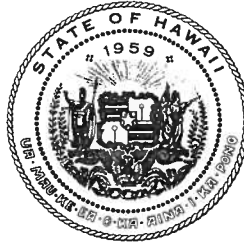
## **Response of the Affected Agency**

### **Comments on Agency Response**

We transmitted a draft of this report to the Department of Commerce and Consumer Affairs on March 11, 2008. A copy of the transmittal letter to the department is included as Attachment 1. The department opted not to provide a response.

ATTACHMENT 1

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917



MARION M. HIGA  
State Auditor

(808) 587-0800  
FAX: (808) 587-0830

March 11, 2008

*COPY*

The Honorable Lawrence M. Reifurth, Director  
Department of Commerce and Consumer Affairs  
King Kalakaua Building  
335 Merchant Street  
Honolulu, Hawaii 96813

Dear Mr. Reifurth:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Sunrise Report: Condominium Commission*. We ask that you telephone us by Thursday, March 13, 2008, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Tuesday, March 18, 2008.

The Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script, appearing to read "marion m. higa".

Marion M. Higa  
State Auditor

Enclosures