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# SENATE CONCURRENT RESOLUTION

ENCOURAGING THE REAL ESTATE COMMISSION TO MODIFY AND ADOPT RULES  
TO REFLECT CHANGES IN THE CONDOMINIUM LAW UNDER CHAPTER  
514B, HAWAII REVISED STATUTES.

1           WHEREAS, during the 2004, 2005, and 2006 legislative  
2 sessions, the Legislature passed several acts (Act 164, Session  
3 Laws of Hawaii 2004; Act 93, Session Laws of Hawaii 2005; and  
4 Act 273, Session Laws of Hawaii 2006) that revised the  
5 "Condominium Property Act", chapter 514A, Hawaii Revised  
6 Statutes (HRS), and recodified it as chapter 514B, Hawaii  
7 Revised Statutes, effective July 1, 2006; and

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9           WHEREAS, the intent of the recodification was to "update,  
10 clarify, organize, deregulate, and provide for consistency and  
11 ease of use of the condominium property regimes law", as  
12 directed by Act 213, Session Laws of Hawaii 2000, which called  
13 for a review of Hawaii's condominium property regimes laws in  
14 preparation for the recodification; and

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16           WHEREAS, as also explained by Act 213, two of the  
17 objections to chapter 514A, HRS, were that it is "overly  
18 regulatory" and "hinders development"; and

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20           WHEREAS, in order to permit the Real Estate Commission to  
21 provide guidance regarding the implementation of the new  
22 Condominium Property Act, the Legislature enacted section  
23 514B-61, HRS, in Act 93, Session Laws of Hawaii 2005,  
24 authorizing the Real Estate Commission to "[a]dopt, amend, and  
25 repeal rules pursuant to chapter 91[, Hawaii Revised Statutes]";  
26 and

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28           WHEREAS, the Legislature finds that except for an  
29 additional subchapter relating to replacement reserves that was  
30 added in 1995, the current administrative rules relating to  
31 condominiums, chapter 107, Hawaii Administrative Rules, have not  
32 been updated since 1981; and

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2 WHEREAS, notwithstanding that two and one-half years have  
3 elapsed since the new Condominium Property Act took effect, the  
4 Real Estate Commission has not yet adopted administrative rules  
5 that pertain to chapter 514B, HRS, nor has it begun to do so;  
6 and  
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8 WHEREAS, furthermore, section 16-107-1, Hawaii  
9 Administrative Rules (HAR), states that chapter 107, HAR, is  
10 "intended to clarify and implement chapter 514A, HRS" and no  
11 mention is made of the chapter's applicability to chapter 514B,  
12 HRS; and  
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14 WHEREAS, instead of updating its administrative rules, the  
15 Real Estate Commission has been following its long-standing  
16 practice of issuing "nonbinding" opinions, some of which  
17 interpret statutory provisions of chapter 514B, HRS; and  
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19 WHEREAS, these nonbinding opinions are issued for specific  
20 projects during monthly Condominium Review Committee and Real  
21 Estate Commission meetings that are not part of the rulemaking  
22 procedures as established under chapter 91, HRS; and  
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24 WHEREAS, it has been reported that, these "nonbinding"  
25 opinions are used by the Real Estate Commission to interpret the  
26 questions of developers, their attorneys, and Real Estate  
27 Commission private consultants for purposes of the condominium  
28 public report application process, and that effective dates for  
29 condominium public reports are not issued except in compliance  
30 with these nonbinding opinions; and  
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32 WHEREAS, the Legislature is concerned that, by issuing such  
33 nonbinding opinions in lieu of adopting administrative rules,  
34 and then relying on these nonbinding opinions for future  
35 decisions, the Real Estate Commission may be engaging in  
36 rulemaking without adhering to chapter 91, HRS; and  
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38 WHEREAS, the Legislature is also concerned that the  
39 practice of issuing a nonbinding opinion based upon a unique set  
40 of facts presented at a Real Estate Commission hearing and then  
41 applying the opinion to other projects may lead to situations  
42 where precedential weight is ascribed to a decision merely  
43 because it is the first to be heard by the Real Estate

1 Commission and not because the decision is truly generally  
2 applicable to other projects; and  
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4 WHEREAS, the Legislature believes that it would be far more  
5 beneficial to developers, their attorneys, and Real Estate  
6 Commission private consultants for the Real Estate Commission to  
7 engage in public rulemaking pursuant to chapter 91, HRS, in  
8 order to assure that various views are heard, rather than  
9 issuing nonbinding opinions based on the argument of only one  
10 developer or attorney presenting his or her case at a Real  
11 Estate Commission meeting; and  
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13 WHEREAS, the Legislature believes that engaging in the  
14 rulemaking procedures under chapter 91, HRS, will ensure that  
15 the Real Estate Commission adheres to the law and allows input  
16 from the public to assure that chapter 514B, HRS, does, in fact,  
17 "provide for consistency and ease of use of the condominium  
18 property regimes law", as directed by Act 213; now, therefore,  
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20 BE IT RESOLVED by the Senate of the Twenty-fifth  
21 Legislature of the State of Hawaii, Regular Session of 2009, the  
22 House of Representatives concurring, that the Real Estate  
23 Commission is encouraged to move expeditiously in drafting,  
24 adopting, and implementing revised or additional administrative  
25 rules under chapter 107, HAR, to reflect changes in the  
26 condominium law under chapter 514B, HRS; and  
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28 BE IT FURTHER RESOLVED that the Real Estate Commission is  
29 encouraged to hold public hearings on proposed administrative  
30 rules to reflect changes in the condominium law under chapter  
31 514B, HRS, before the beginning of the Real Estate Commission's  
32 next fiscal year; and  
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34 BE IT FURTHER RESOLVED that the Chair of the Real Estate  
35 Commission is requested to report on the progress made to  
36 updating chapter 107, HAR, to the Legislature not later than  
37 twenty days before the convening of the Regular Session of 2010;  
38 and  
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40 BE IT FURTHER RESOLVED that certified copies of this  
41 Concurrent Resolution be transmitted to the Director of Commerce  
42 and Consumer Affairs and the Chair of the Real Estate  
43 Commission.