

MAR 06 2020

SENATE RESOLUTION

REQUESTING THAT THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
CONVENE A TASK FORCE TO RECOMMEND LAWS AND REGULATIONS
CONCERNING CONDOMINIUM ASSOCIATION DIRECTOR AND OFFICER
EDUCATION AND TRAINING.

1 WHEREAS, Hawaii has the highest number of condominium
2 association board of directors and officers' liability insurance
3 claims in the country and the amount of the claims are larger
4 than those on the mainland; and

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6 WHEREAS, most, if not all, of the claims made can be
7 attributed to a lack of knowledge or experience of unpaid,
8 volunteer directors of condominium associations relating to
9 their respective governing documents, responsibilities as board
10 members, and their liability for their failure to act in
11 accordance with their fiduciary duties; and

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13 WHEREAS, because insurance carriers in the State that
14 provide directors and officers liability insurance policies for
15 condominium associations have diminished to only two or three
16 carriers, the claims have caused all condominium association
17 director and officer insurance coverage premiums across the
18 State to increase, as all condominium associations are in the
19 same risk pool; and

20
21 WHEREAS, many of the claims have led to lawsuits that have
22 resulted in substantial legal defense costs and multi-million
23 dollar judgments against the association and their board
24 members, and in some cases, judgment costs are not covered by
25 insurance, meaning they are passed on to owners; and

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27 WHEREAS, even if claims do not lead to a lawsuit, disputes
28 require the association to incur legal or consultant expenses to
29 resolve a dispute, the costs of which are not typically covered
30 by the association's budget; and

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32 WHEREAS, mandating education for condominium association
33 directors and officers concerning ethical and legal standards
34 pertaining to the condominium association may help to avoid



1 future claims, which may also help to reduce association fees
2 for Hawaii residents; and

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4 WHEREAS, the Condominium Education Trust Fund has collected
5 substantial funds over the years from condominium associations
6 throughout the State, and one of the purposes of the fund is to
7 educate condominium owners and association directors; now,
8 therefore,

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10 BE IT RESOLVED by the Senate of the Thirtieth Legislature
11 of the State of Hawaii, Regular Session of 2020, that the
12 Department of Commerce and Consumer Affairs' Real Estate
13 Commission is requested to convene a task force to recommend
14 laws and regulations concerning the mandatory educational,
15 training, and certification requirements of condominium
16 association directors and officers; and

17
18 BE IT FURTHER RESOLVED that the task force is requested to
19 include the following members:

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- 21 (1) Chairperson of the Real Estate Commission or their
22 designee, who shall serve as chairperson of the task
23 force;
 - 24
 - 25 (2) A representative from the Community Associations
26 Institute;
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 - 28 (3) A representative from the Hawaii Council of Community
29 Associations;
 - 30
 - 31 (4) A representative from an organization that advocates
32 for owners, to be selected by the chairperson;
 - 33
 - 34 (5) Representatives from three property management
35 companies that operate in more than one county in the
36 State, to be selected by the chairperson;
 - 37
 - 38 (6) A representative from the Hawaii Association of
39 REALTORS;
 - 40
 - 41 (7) A representative from the insurance industry licensed
42 to practice in the State who is familiar with



1 directors and officers' liability insurance claims and
2 policies, to be selected by the chairperson;
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4 (8) A member of the Senate appointed by the President of
5 the Senate;
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7 (9) A member of the House of Representatives appointed by
8 the Speaker of the House of Representatives; and
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10 (10) Any other stakeholders deemed appropriate and
11 necessary by the chairperson; and
12

13 BE IT FURTHER RESOLVED that the task force is requested to
14 consider the following:
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16 (1) The development of a curriculum to be adopted by the
17 Department of Commerce and Consumer Affairs and to be
18 completed by each director of a condominium
19 association that covers topics including but not
20 limited to the association's governing documents,
21 directors' fiduciary duties and personal liability
22 that may result from any breach of that duty,
23 applicable codes of conduct, conflicts of interest,
24 the business judgment rule, and confidentially;
25

26 (2) Whether associations' legal counsel or stakeholder
27 groups can perform educational seminars to certify
28 directors upon completion of the approved curriculum;
29

30 (3) Whether funds can be used from the Condominium
31 Education Trust Fund to procure a vendor to create and
32 administer webinars to educate and certify directors
33 based on the approved curriculum;
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35 (4) Enforcement remedies for noncompliance; and
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37 (5) Any other matters deemed appropriate by the
38 chairperson; and
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40 BE IT FURTHER RESOLVED that the task force is requested to
41 submit to the Legislature its findings, recommendations, and any



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1 proposed legislation, no later than twenty days prior to the
2 convening of the Regular Session of 2021; and

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4 BE IT FURTHER RESOLVED that certified copies of this
5 Resolution be transmitted to the President of the Senate;
6 Speaker of the House of Representatives; Director of Commerce
7 and Consumer Affairs; Chairperson of the Real Estate Commission;
8 Community Associations Institute; Hawaii Council of Community
9 Associations; Hawaii Council of Associations of Apartment
10 Owners; and Hawaii Association of REALTORS.

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OFFERED BY: _____

