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Presents the

2024 Legislative Update

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WELCOME TO THE 2024 CAI LEGISLATIVE UPDATE WEBINAR

Thank you for participating in today's review of the 2024 legislative session. Your interest is appreciated.

An insurance stabilization bill made it *to*, but not *through*, conference committee and so did not pass. On the plus side, a new mechanism to enable long-term financing of major rehabilitation projects did pass.

A tweak was made to facilitate the use of modern meeting technology. Also, condominium purchase documents can now be delivered electronically.

The legislature has tasked the Legislative Reference Bureau to study how other states handle a range of condominium-related topics. The Condominium Property Regime Task Force, created last year, unanimously recommended that study.

An assortment of other bills touch associations directly or potentially. Not least of all, the legislature has "clarif[ied] that uses that include the provision of transient accommodations are not considered residential uses and may be phased out or amortized by the counties[.]" A penalty for failure to comply with reporting requirements under the general excise and transient accommodations tax laws has been added.

The legislature has prohibited new private covenants from limiting the number of accessory dwellings that may be built within an urban district. The owner-builder exception to the contractor licensing law has also been broadened "to remove the leasing restriction on owner-builders[.]" Residential uses, including multifamily uses, will now be allowed in areas zoned for commercial use as well.

The legislature found that: "requiring the [Public Utilities Commission] to factor in the hidden and long-term costs of the State's detrimental reliance on fossil fuels when exercising its statutory authority would assist in reducing the State's reliance on fossil fuels." A solar hui program has been established to allow multi-family residential property owners to invest in a solar hui investment fund.

Wage and hour law has been amended to cover more people in the definition of "employee."

Owners of loose dogs that behave aggressively are subjected to greater potential liability. Separately, the "legislature finds that feral chickens and roosters have become a persistent nuisance, particularly in suburban and urban residential communities."

The definition of "dwelling" in connection with the burglary statute has been broadened to include: "any connected parking or storage areas, access to which is clearly restricted to residents by means of signage or security apparatus, or both."

These things, and more, will be discussed. We hope to be informative.

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CONDOMINIUM BILLS

HB 2315 HD1 SD2 CD1

Hawaii Revised Statutes ("HRS") §514B-121, titled "Association meetings", has been revised. The revision is intended to clarify "the procedure for electronic meetings, electronic voting and mail voting."

Subsection "(b)" is deleted. That section contained provisions relating to security and an audit trail. Apart from that apparent expression of trust in current technology, the salient changes include the reordering of conditions necessary for a board to authorize electronic meetings, electronic voting and mail voting in its sole discretion:

> (e) Notwithstanding any provision to the contrary in the association's declaration or bylaws [~~or in subsection (b)~~], electronic meetings [~~and electronic, machine, or~~], electronic voting, and mail voting may be authorized by the board in its sole discretion:
>
> (1) During any period in which a state of emergency or local state of emergency, declared pursuant to chapter 127A, is in effect in the county in which the condominium is located;
>
> (2) For any association meeting for which notice was given while a state of emergency or local state of emergency, declared pursuant to chapter 127A, was in effect for the county in which the condominium is located but is no longer in effect as of the date of the meeting; provided that the meeting is held within sixty days of the date the notice was first given;
>
> [~~(3) For any electronic, machine, or mail voting for which notice of voting has been sent; provided that the electronic, machine, or mail voting deadline is within sixty days of the date the notice was first sent;~~
>
> ~~(4) Whenever approved in advance by:~~]
>
> (3) When approved by adoption of a special meeting rule at an association meeting that permits the board to authorize electronic meetings, electronic voting, and mail voting;
>
> (4) When approved no less than three months and no more than eighteen months before the electronic meeting, electronic voting, and mail voting by:
>
> (A) Written consent of a majority of unit owners; or
>
> (B) Majority vote at an association meeting; or
>
> (5) Whenever otherwise authorized in an association's declaration or bylaws.
>
> For any electronic meetings, electronic voting, and mail voting, the voting deadline shall be within sixty days of the date the notice was first sent. The association shall implement reasonable measures to verify that each person permitted to vote is a member of the association or proxy of a member.

Further, subsection (f) will now read as follows:

> (f) All association meetings, except those where all persons attend by electronic means, shall be held at the address of the condominium or elsewhere within the State as determined by the board; provided that in the event of a natural disaster, [~~such as a hurricane,~~] an association meeting may be held outside the State."

HB 2801 HD1 SD1 CD1

There is a new form of financing for certain expensive condominium projects. The United States Department of Energy describes Commercial Property Assessed Clean Energy (C-PACE) financing thusly:

> Commercial property assessed clean energy (C-PACE) is a tool that can finance energy efficiency and renewable energy improvements on commercial property. Like other project financing, C-PACE uses

borrowed capital to pay for the upfront costs associated with energy efficiency or renewable energy improvements. Unlike other project financing, the borrowed capital is repaid over time via a voluntary tax assessment. The security provided by the tax assessment, a long-used and well understood mechanism, results in several compelling features, including longer term financing and transferability of the repayment obligations to the next property owner. In turn, C-PACE strengthens the business case for investment in longer payback and deeper building retrofits beyond what is possible with traditional financing.

https://www.energy.gov/scep/slsc/articles/commercial-property-assessed-clean-energy-fact-sheet-state-and-local-governments

Section 1 of the bill provides as follows:

> SECTION 1. The legislature finds that Act 183, Session Laws of Hawaii 2022, authorized commercial property assessed financing, also known as commercial property assessed clean energy and resiliency, or C-PACER financing, in Hawaii. C-PACER is an alternative financing option that finances one hundred per cent of qualified capital improvement costs, with terms matching the useful life of the equipment installed, thereby making payments more affordable than a typical equipment loan. The legislature further finds that C-PACER financing can help condominium associations finance the installation of fire safety and other energy efficiency, renewable energy, water conservation, and resiliency measures at more attractive rates and terms than may be currently available with conventional financing.
>
> The purpose of this Act is to:
>
> (1) Consolidate the authority to administer a C-PACER financing program under the Hawaii green infrastructure authority by repealing the authority of counties to administer such programs and delegating all existing administrative responsibilities of the counties under the commercial property assessed financing program to the Hawaii green infrastructure authority;
>
> (2) Enable condominium associations to participate in C-PACER financing; and
>
> (3) Provide clarity to the definition of a commercial property for purposes of green infrastructure loans.

Condominium associations "consisting of six or more units" (but not individual unit owners) are eligible to voluntarily choose this form of loan. In doing so, an association will subject itself to a government lien, which provides security for loan repayment. That lien is described in the following excerpt from Section 4 of the bill (amending HRS §196-64.5):

> The principal amount of financing made pursuant to this section shall be a governmental lien against each lot or parcel of the property, or in the case of a condominium, a governmental lien against the condominium association, assessed for a period beginning on the date of the notice of the assessment and ending once payment is made in full or otherwise satisfied in accordance with the commercial property assessed financing assessment contract; provided that the lien shall have priority over all other liens except the liens for property taxes and other assessments lawfully imposed by governmental authority against the property; provided further that for multiple liens of assessments, the earlier lien shall have priority over the later lien.

Several sections of HRS Chapter 514B are also amended.

> "SECTION 6. Section 514B-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:
>
> "(b) If there is any unit owner other than a developer, each unit shall be separately taxed and assessed, and no separate tax or assessment [~~may~~] shall be rendered against

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any common elements. The laws relating to home exemptions from state property taxes are applicable to individual units, which shall have the benefit of home exemption in those cases where the owner of a single-family dwelling would qualify. Property taxes assessed by the State or any county shall be assessed and collected on the individual units and not on the property as a whole. Commercial property assessed financing program assessments pursuant to section 196-64.5 may be imposed upon the project, as described by the project's master deed, declaration, and map pursuant to part III of this chapter; provided that a commercial property assessed financing contract is entered into by a condominium association with an approved commercial property assessed financing lender and the Hawaii green infrastructure authority. Without limitation of the foregoing, each unit and its appurtenant common interest shall be deemed to be a "parcel" and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including[,] but not limited to[,] other non-commercial property assessed financing program special assessments."

Section 514B-41(a) is amended to include: "capital improvements financed by commercial property assessed financing pursuant to section 196-64.5" among the common expenses of the condominium. A new subsection (f) is added to Section 514B-105, to provide as follows:

> (f) For financing assessments imposed upon the project under a commercial property assessed financing program pursuant to section 196-64.5 and due from the association, the cost of the commercial property assessed financing, including all principal, interest, commitment fees, servicing fees, and other expenses payable with respect to this borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the

project and the unit owners' proportionate share of the financing assessment shall be collected in the same manner as common expenses. The written consent of at least fifty per cent of all unit owners to finance qualifying improvements with commercial property assessed financing shall include an acknowledgment that the annual financing assessment required to fund debt service on the commercial property assessed financing shall be included as part of the association's adopted revised budget." "

So, while nothing *requires* an association to access this form of financing, the enabling law is structured to assure that any C-PACE loan will be repaid.

SB 2600 HD1 CD1

This bill amends Part V of Chapter 514B, concerning the protection of condominium purchasers, by allowing documents related to the purchase of condominium units from a developer to be delivered by email.

SECTION 1. Section 514B-88, Hawaii Revised Statutes, is amended to read as follows:

"**[~~†~~]§514B-88[~~†~~] Delivery.** In this part, delivery shall be made by:

(1) Personal delivery;

(2) Registered or certified mail with adequate postage[~~,~~] to the recipient's address; provided that delivery shall be considered made three days after deposit in the mail or on any earlier date upon which the return receipt is signed;

(3) Facsimile transmission, if the recipient has provided a fax number to the sender; provided that delivery shall be considered made upon the sender's receipt of automatic confirmation of transmission; [~~or~~]

(4) Electronic mail; or

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[~~(4)~~] (5) Any other way prescribed by the commission."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

SB 2726 SD2 HD1 CD1

The legislature created the Condominium Property Regime Task Force last year. As specified in Act 189 (2023):

> (b) The task force shall:
> (1) Examine and evaluate issues regarding condominium property regimes governed by chapter 514B, Hawaii Revised Statutes, and conduct an assessment of the alternative dispute resolution systems that have been established by the legislature;
> (2) Investigate whether additional duties and fiduciary responsibilities should be placed on members of the boards of directors of condominium property regimes; and
> (3) Develop any legislation necessary to effectuate the purposes of this subsection.

Thus far, task force meetings have been notable more for attacks on industry generally, and on specific industry participants, than on targeted proposals to address particular issues of concern. With some exception, efforts to constructively address concerns have largely fallen victim to the voluble repetition of usual criticisms by devoted critics.

There is a reason why the most distressed industry critics disdain the implementation of discrete fixes for discrete issues. The reason is that vilification of the *system* is essential to advancement of their proposal to end self-governance.

The end of self-governance is the plain and undeniable objective of the core protagonists. If SB 3205 had passed, for example, the long sought ombudsman would have been investigator, prosecutor and judge. "Any final decision made by the

ombudsman shall be binding on all parties."

In plain violation of the constitutional right to trial by jury, the failed bill also provided that: "(b) No proceeding or decision of the ombudsman may be reviewed by any court unless the proceeding or decision contravenes this chapter." And, of course, the "chapter" was designed so that no decision would ever "contravene" it. Thus, the decisions of the ombudsman would be beyond the reach of judicial review. The ombudsman would have absolute power.

Is dictatorship better than democracy? And would reposing final unreviewable power in one executive branch government official yield better results than exist today? According to the FBI, it is "estimated that public corruption costs the U.S. government and the public billions of tax dollars each year." https://www.fbi.gov/investigate/public-corruption

It is also true that the governing documents of condominiums are contracts, and there are constitutional limits on what the legislature can do to impair existing contracts. Which is to say that tearing up the existing system in favor of the dystopian "solutions" advanced by critics would likely fare poorly in the courts.

So, addressing perceived problems as they arise may be more practical than burning down the house.

One identified complaint is that enforcement action to collect unpaid fines can increase the financial obligation of an owner by adding attorney's fees to the amount of the fine. Leaving aside that fines can be avoided by compliance with the governing documents and that attorney's fees can be avoided by paying imposed fines, there is a simple fix.

A bill to provide that the sole venue for disputes about fines is small claims court could be easily crafted. The bill could provide that attorney's fees may not accrue relative to fines.

Crippling the enforcement authority of associations is an obsession of some critics, and perceived abuse relating to the imposition of fines enables those critics to suggest that there is a need to prevent associations from enforcement activity. Thus, there is good reason to isolate the fining remedy from more essential remedies.

It remains to be seen whether the task force will produce worthwhile results. Continued pointless insistence on constitutionally infirm and otherwise unsound initiatives would tend to undermine that possibility.

Similarly, any effort to prolong the venting phase would serve no purpose. The task force has heard the same complaints that have been made to the legislature year after year. The critique is fully understood.

The task force did unanimously agree on one thing. It unanimously "request[ed] the Legislature to task the Legislative Reference Bureau ("LRB") to study and report on several specific subjects to enable the Task Force to recommend legislation hereafter on an informed and objective basis." The text of the resulting bill follows:

> BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:
>
> SECTION 1. The legislature finds that Act 189, Session Laws of Hawaii 2023, established the condominium property regime task force, which met on September 11, 2023; October 27, 2023; November 30, 2023; and December 14, 2023, to develop recommendations as part of its interim report to the legislature before the start of the regular session of 2024. Task force members sought and received information from the department of commerce and consumer affairs and several members of the public submitted written testimony and presented oral comments during hybrid remote and in-person meetings held by the task force. Links to the task force meetings and written materials are posted on the department of commerce and consumer affairs' website and are linked to the legislature's website.
> The purpose of this Act is to:

(1) Implement the request by the condominium property regime task force to require the legislative reference bureau to conduct a study on certain condominium subjects; and

(2) Extend the deadline for the final report and the cease date for the condominium property regime task force to June 30, 2026.

SECTION 2. (a) The legislative reference bureau shall study and submit a report on the approaches employed by certain other states regarding the following condominium subjects:

(1) A condominium ombudsman or similar position to specifically oversee condominiums;

(2) Required licenses for individuals involved in the management of condominiums;

(3) The availability of dedicated alternative dispute resolution or similar programs that are specifically for the prevention or resolution of condominium-related disputes and are separate from alternative dispute resolution programs available for other disputes;

(4) Governmental regulation and enforcement of condominium operations and governance that are separate from an ombudsman referenced in paragraph (1);

(5) Requirements for owner education at the point of sale of a unit; and

(6) Requirements for owner access to condominium documents.

(b) To the extent feasible, each subject shall include:

(1) Descriptive information detailing the approach of each jurisdiction;

(2) Identified strengths and weaknesses of each particular approach; and

(3) Identified best practices in the jurisdiction.

(c) The jurisdictions to be studied shall be:

(1) California;

(2) Delaware;

(3) Florida;

(4) Massachusetts;
(5) Nevada; and
(6) Any other jurisdiction deemed relevant by the legislative reference bureau.
(d) The legislative reference bureau shall submit the report to the legislature and the condominium property regime task force no later than twenty days prior to the convening of the regular session of 2026.

SECTION 3. Act 189, Session Laws of Hawaii 2023, section 3, is amended by amending subsections (e) and (f) to read as follows:
"(e) The task force shall submit a final report of its findings and recommendations, including any proposed legislation, to the legislature no later than [~~twenty days prior to the convening of the regular session of 2025.~~] June 30, 2026.
(f) The task force shall cease to exist on June 30, [~~2025.~~] 2026."

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $200,000 or so much thereof as may be necessary for fiscal year 2024-2025 for the legislative reference bureau to conduct a study of condominium subjects in other states as specified in section 2 of this Act.

The sum appropriated shall be expended by the legislative reference bureau for the purposes of this Act.

SECTION 5. There is appropriated out of the condominium education trust fund established pursuant to section 514B-71, Hawaii Revised Statutes, the sum of $150,000 or so much thereof as may be necessary for fiscal year 2024-2025 for the legislative reference bureau to conduct a study of condominium subjects in other states as specified in section 2 of this Act; provided that the director of commerce and consumer affairs may substitute the means of financing of some or all of this appropriation from the condominium education trust fund to any other source of funding available to the director of commerce and consumer affairs that may be used to fund some or all of the study required under this Act.
The sum appropriated shall be transferred by the real estate commission to the legislative reference bureau to expend on the study required under this Act; provided that:
(1) The legislative reference bureau shall not commence or execute any aspect of the study until the moneys appropriated under this section have been transferred from the real estate commission to the legislative reference bureau; and
(2) Any moneys from this appropriation not encumbered or expended by the legislative reference bureau for the purposes of this Act that remain on balance on June 30, 2026, shall lapse to the credit of the condominium education trust fund established pursuant to section 514B-71, Hawaii Revised Statutes.
SECTION 6. The legislative reference bureau may contract the services of a consultant with the funds appropriated in this Act. The contracting of services under this Act shall be exempt from chapter 103D, Hawaii Revised Statutes.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2024.

OTHER BILLS

HB 1633 HD1 SD1 CD1

"SECTION 1. The legislature finds that the State faces a critical shortage of affordable rental housing, creating challenges for residents seeking accessible and diverse housing options. The escalating demand for rental properties, coupled with limited housing supply, has led to increased housing costs and economic strain on families throughout the State.

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The legislature further finds that current regulations and barriers hinder homeowners in Hawaii from efficiently converting their single-family properties into multi-family dwellings, limiting their ability to actively participate in addressing the housing crisis.

Accordingly, the purpose of this Act is to remove the leasing restriction on owner-builders who obtain an owner-builder exemption to act as their own contractor and who build or improve residential or farm buildings or structures on property they own or lease and do not offer the buildings or structures for sale."

Repeals the leasing restriction on owner-builders who obtain an owner-builder exemption to act as their own contractor and who build or improve residential or farm buildings or structures on property they own or lease and do not offer the buildings or structures for sale. (CD1)

HB 2058 HD1 SD1 CD1

"SECTION 1. The legislature finds that Hawaii struggles with the problem of loose dogs that behave aggressively. Some of these dogs are feral; other dogs have owners who have failed to control or train their dogs; and yet other dogs have been abandoned. The legislature further finds that for dogs with owners, these owners should clearly be held responsible for the aggressive actions of their dogs that harm persons or other animals.
Therefore, the purpose of this Act is to:
(1) Define what constitutes a dangerous dog; and
(2) Establish requirements and penalties for owners of dangerous dogs."

A significant aspect of the bill is as follows:

"§711-E Negligent failure to control a dangerous dog; penalties. (a) The owner of a dangerous dog commits the offense of negligent failure to control a dangerous dog if:
(1) A bite injury occurs due to the failure of the owner of a dangerous dog to comply with the requirements of this part; or
(2) The owner of a dangerous dog negligently fails to take reasonable measures to prevent the dangerous dog from causing a bite injury, without provocation, to a person or another animal and the attack results in:
(A) The serious injury to any animal or maiming or death of another animal;
(B) Bodily injury to a person other than the owner; or
(C) Substantial bodily injury to, serious bodily injury to, or the death of, a person other than the owner.
(b) An offense under subsection (a)(1), (a)(2)(A), or (a)(2)(B) shall be a misdemeanor for which the owner of the dangerous dog shall be sentenced to:
(1) A fine of no less than $1,000 but no more than $2,000;
(2) A term of imprisonment of up to six months or a period of probation of no more than one year;
(3) The payment of restitution to any person who has suffered bodily injury or property damage as a result of an attack by the dangerous dog if the person suffers financial losses or medical expenses due to the attack. As used in this paragraph, "medical expenses" may include the costs of necessary counseling or rehabilitative services; and
(4) The payment of all expenses for the boarding and retention of the dangerous dog if the dog is seized and impounded pursuant to this part; provided that no sentence under this subsection shall be suspended."

HB 2090 HD1 SD2 CD1

SECTION 1. The legislature finds that Hawaii needs to increase its housing supply to meet local demand for housing, mitigate housing cost increases, and prevent displacement of residents and homelessness. Hawaii has the highest housing costs in the nation, and a substantial body of research shows that high housing costs are the result of regulatory restrictions on the ability to build homes to keep up with demand. Strict separation of land uses, such as allowing only commercial uses in certain areas, is one such regulatory restriction.

The legislature further finds that much-needed housing is particularly appropriate in areas zoned for commercial use. Allowing mixed commercial and residential uses creates vibrant neighborhoods by allowing residents to live near businesses and employers. Furthermore, it reduces the need for long commutes, decreases traffic congestion, and lowers carbon emissions. The legislature believes that adapting commercial buildings to residential use preserves Hawaii's natural beauty and agricultural land by allowing housing in developed commercial areas rather than on undeveloped land. The legislature notes that infrastructure for this type of infill construction is more cost-effective, requiring less upfront infrastructure and reducing costs for the ongoing delivery of services.

Therefore, the purpose of this Act is to:

(1) Beginning on January 1, 2025, permit residential uses, including multifamily uses, in areas zoned for commercial use, with certain exceptions; and

(2) Require, no later than January 1, 2025, each county to adopt or amend its ordinances to allow for adaptive reuse of commercial buildings for residential purposes.

HB 2390 HD2 SD1 CD1

SECTION 1. The legislature finds that Hawaii is an isolated island chain that is uniquely vulnerable to climate change. As evidenced by the August 2023 Maui wildfires that devastated Lahaina and impacted areas of west Maui and other communities, climate disasters increasingly threaten the State's well-being.

Act 109, Session Laws of Hawaii 2011 (Act 109), amended section 269-6, Hawaii Revised Statutes, to require the public utilities commission to explicitly consider the effect of the State's reliance on fossil fuels in various areas, including greenhouse gas emissions, in its determinations of the reasonableness of various costs. When Act 109 was being considered, the legislature found that "Hawaii is dangerously reliant on imported fossil fuel, which subjects the State and residents to greater oil and gas price volatility, increased air pollution, and

potentially harmful climate change due to the release of harmful greenhouse gases". The committee also found that requiring the commission to factor in the hidden and long-term costs of the State's detrimental reliance on fossil fuels when exercising its statutory authority would assist in reducing the State's reliance on fossil fuels.

The purpose of this Act is to require the public utilities commission to explicitly consider the effect of the State's reliance on fossil fuels on lifecycle greenhouse gas emissions and give the commission the discretion to waive a lifecycle greenhouse gas emissions assessment for energy projects that do not involve combustion.

HB 2463 HD2 SD2

This bill expands the number of people subject to the wage and hour law by doubling the threshold for exemption from $2,000.00 monthly to $4,000.00 monthly. The bill is:

Amending the definition of "employee" in Hawaii's Wage and Hour Law to exclude any employee who receives guaranteed compensation totaling $4,000 or more a month.

HB 2485 HD1 SD2

This bill:

Repeals an obsolete fee for a certified copy of a tax clearance. Adds a penalty for failure to comply with reporting requirements under the general excise tax law and transient accommodations tax law for collection of rent by a third party. Raises the unfair competition penalty under the general excise tax law to adjust for inflation. (SD2)

***

SECTION 4. Section 237D-8.5, Hawaii Revised Statutes, is amended to read as follows:

***

(e) Failure to comply with any provision of this section shall be unlawful. The department of taxation may issue a citation to any person who fails to comply with any provision of this section. A citation issued pursuant to this subsection shall include a monetary fine of no more than $500 per violation. Any fine assessed under this subsection shall be due and payable thirty days after issuance, subject to appeal rights provided under this subsection. Citations may be appealed to the director or the director's designee, and the determination of the director may be appealed to the circuit court pursuant to chapter 91."

HB 2685 HD2 SD1 CD1

This bill:

Establishes the solar hui program to allow multi-family residential property owners to invest in a solar hui investment fund, which will provide repayment of income derived from energy services agreements to low- and moderate-income households to install solar energy systems. Establishes the solar hui program fund manager position. Appropriates funds. (CD1)

"SECTION 1. Chapter 196, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows: ***

§196-B Solar hui program; fund manager. (a) There is established the solar hui program to be administered by the authority. The solar hui program shall provide a multi-family residential property owner the opportunity to invest in the solar hui investment fund established pursuant to section 196-C. Multi-family residential property owners who invest in the solar hui investment fund under the solar hui program may be eligible to receive:

(1) Any tax credit associated with the installation of a solar energy system, subject to the requirements of the tax credit; and

(2) Any income derived from:

(A) Repayment of an energy services agreement with the low- and moderate-income household ratepayer

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provided by the solar hui investment fund; or

(B) Generation of energy from an energy project entered into by the fund manager."

HB 2742 HD1 SD2 CD 1

This bill:

Establishes a pre-litigation mediation procedure for tenancies that are subject to the eviction moratorium issued under the Governor's emergency proclamations relating to wildfires once the eviction moratorium expires. Restricts when landlord remedies are available depending on the amount of rent due. Appropriates funds to the Judiciary for mediation services. Effective 7/1/2024, except the new pre-litigation procedures are effective on the expiration of the final eviction moratorium. Repeals certain provisions on 12/31/2026, or on the one-year anniversary of the expiration of the Governor's final eviction moratorium emergency supplementary proclamation relating to wildfires, whichever occurs sooner. (CD1)

SB 2132 SD1 HD1 CD1

This bill:

Amends the deadline related to the repair of conditions that constitute health or safety violations. Increases the amount deducted from a tenant's rent for the tenant's actual expenditures to correct health or safety violations and defective conditions. Takes effect 11/1/2024. (CD1)

SB2401 SD2 HD2

The legislature has heard the pre-dawn crow of the rooster, and decided that has become a problem:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that feral chickens and roosters have become a persistent nuisance, particularly in suburban and urban residential communities. Feral chickens and roosters wander into yards and gardens, digging up plants, damaging food crops, and jeopardizing native plants and resources. Feral roosters crow at all times of the day and night, which has led to numerous noise complaints by residents throughout the State, and droppings from feral chickens are unsanitary and create a health concern.

The legislature further finds that feral chickens and roosters also carry diseases that threaten other animals, including native birds, and a noticeable increase in the number of feral chickens and roosters also creates a road hazard for drivers who must suddenly stop or swerve to avoid them. The legislature further finds that residents and visitors need better education to not exacerbate this problem by feeding feral animals, which leads to further congregation and growth of the nuisance. To protect Hawaii's ecosystem and natural resources and the health and safety of its residents, it is critical that the State work together with the counties to identify and implement collaborative solutions to control the significant increase in the population of feral chickens and roosters.

Accordingly, the purpose of this Act is to:

(1) Require the department of agriculture to work with each county to implement feral chicken control programs and feeding of feral animals education campaigns; and

(2) Require each county to match the funds expended by the department of agriculture for the implementation of the feral chicken control program and feeding of feral animals education campaign in that county.

SECTION 2. (a) The department of agriculture shall work with each county to implement feral chicken control programs and feeding of feral animals education campaigns in each county.

(b) Each county shall provide one hundred per cent of matching funds for the amount of funds expended by the department of agriculture for the implementation of the feral chicken control program and feeding of feral animal education campaign in that county.

SECTION 3. This Act shall take effect on July 1, 2024.

SB 2532 SD2 HD1 CD1

This bill expands the definition of burglary to include criminal intrusions into restricted parking and storage areas of multi-unit buildings, and authorizes a variety of people to file a complaint:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that there has been an increase in criminal acts by non-residents within the restricted areas of multi-unit dwellings. As the number of multi-unit dwellings continues to rise in the foreseeable future, the efforts of law enforcement agencies and county prosecuting offices need to be directed, whenever possible, toward investigating and prosecuting the criminal acts of non-residents within the restricted areas of multi-unit dwellings as burglaries. Burglary, as opposed to theft, is not only an offense against property rights, it is an offense against the fundamental sense of security and well-being of the owner whose property has been unlawfully entered.

Pursuant to section 708-810, Hawaii Revised Statutes, burglary of a dwelling is a class B felony, regardless of the value of any property stolen or damaged or any other crime committed or attempted during the unlawful entry. The legislature notes with concern the frequent reluctance of county law enforcement and prosecutor's offices to investigate and prosecute burglaries of restricted parking and storage areas within apartment buildings and condominiums, despite the clear danger posed to the buildings' residents. The legislature also notes that, with respect to the burglary of a parking or storage area within a multi-unit dwelling, it is also the building's owner or condominium association whose property has been invaded and who may be in the best position to follow through with law enforcement agencies to provide evidence and cooperate with the prosecution of the crime.

Accordingly, the purpose of this Act is to:

(1) Clarify that the definition of "dwelling", as it relates to offenses against property rights, includes multi-unit buildings and connected parking or storage areas that are restricted to residents; and

(2) Allow the owner of a multi-unit building, owner of an individual unit, a property manager, or an authorized representative of the condominium association to act as a complainant for the purpose of investigating and prosecuting an offense of burglary in the first degree in a multi-unit building.

SECTION 2. Section 708-800, Hawaii Revised Statutes, is amended by amending the definition of "dwelling" to read as follows:

""Dwelling" means a building [~~which~~], including a multi-unit building, that is used or usually used by a person or persons for lodging. "Dwelling" includes any connected parking or storage areas, access to which is clearly restricted to residents by means of signage or security apparatus, or both."

SECTION 3. Section 708-810, Hawaii Revised Statutes, is amended to read as follows:

"**§708-810 Burglary in the first degree.** (1) A person commits the offense of burglary in the first degree if the person intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:

(a) The person is armed with a dangerous instrument in the course of committing the offense;

(b) The person intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense; or

(c) The person recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

(2) An act occurs "in the course of committing the offense" if it occurs in

effecting entry or while in the building or in immediate flight therefrom.

(3) In the case of a dwelling that is a multi-unit building, the owner of the multi-unit building, owner of an individual unit, a property manager, or an authorized representative of the condominium association may act as a complainant.

[~~(3)~~] (4) Burglary in the first degree [~~is~~] shall be a class B felony."

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.

B 2715 SD1 HD2 CD1

Makes it unlawful for an employer to discharge, discipline, or otherwise penalize or threaten any adverse employment action against an employee because the employee declines to attend or participate in an employer-sponsored meeting that communicates the opinion of the employer about political matters, or declines to receive or listen to a communication from the employer that communicates the opinion of the employer about political matters. Defines "employee" and "political matters". (CD1)

SB 2834 SD1 HD2 CD1

Amends the Residential Landlord-Tenant Code to provide for a process to dispose of the tenant's personal property and surrender the dwelling unit to a landlord when there is a death of a tenant. Takes effect 11/1/2024. (CD1)

SB 2861 SD1 HD1 CD1

Makes certain long-term exclusive listing agreements for the sale of residential real property void and unenforceable under the

state law that governs unfair and deceptive practices. Prohibits the recording or filing of exclusive listing agreements of any duration with the Bureau of Conveyances. Establishes certain remedies. Takes effect 11/1/2024. (CD1)

SB 2960 SD1 HD1 CD1

Requires that lessees and purchasers of farm lots and ranch lots use that land for farming and producing food, under certain conditions. Authorizes certain agricultural cooperative associations to apply for farm lots. (CD1)

SB 3011 SD2 HD1 CD1

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 342F-30.8, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

"**[†]§342F-30.8[†] Leaf blowers; weed whackers; restrictions.** (a) In any urban land use district, as designated pursuant to section 205-2, it shall be unlawful for any person to operate a leaf blower or weed whacker within a residential zone or within one hundred feet of a residential zone in the State, except between the hours of 8:00 a.m. and [~~6:00~~] 7:00 p.m. on any day except Sunday or a state or federal holiday, and between the hours of 9:00 a.m. and [~~6:00~~] 7:00 p.m. on Sunday or any state or federal holiday[~~.~~]; provided that government entities, and agents acting on behalf of government entities, may use weed whackers during the prohibited hours in the case of an emergency as defined in section 127A-2."

2. By amending subsections (c) through (e) to read:

"(c) Government entities, and agents acting

on behalf of government entities, shall not be subject to this section[~~.~~] as it applies to leaf blowers.

(d) Any county may adopt a rule or ordinance that places stricter limitations on the use of leaf blowers or weed whackers than are in this section. In case of a conflict between the requirements or limitations of this section and any county rule or ordinance regarding the use of leaf blowers[~~,~~] or weed whackers, the more restrictive requirements shall apply.

(e) For the purposes of this section:

"Leaf blower" means any machine used to blow leaves, dirt, or other debris off sidewalks, driveways, lawns, and other surfaces.

"State holiday" means any day established as a state holiday in section 8-1.

"Weed whacker" means a gasoline or electric powered yard tool that uses either a flexible monofilament line (also known as a string or line trimmer) or revolving metal cutting blade intended to cut or trim grass and other vegetation."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

SB 3202 SD2 HD1 CD1

Think your spacious residential neighborhood is free from overcrowding? Not any more.

The legislature is requiring the counties to allow at least two ADUs on residential lots, and has prohibited new private covenants from restricting that density.

Part I: Requires the counties, no later than 12/31/2026, to adopt or amend an ordinance to allow at least two accessory dwelling units, subject to certain restrictions, on all residentially zoned lots. Prohibits private covenants for residentially zoned lots within an urban district from limiting the number of accessory dwelling units below the amount allowed pursuant to State law or the long-term rental of residential units. Part II: Requires any administrative authority to act on any application for subdivision, consolidation, or resubdivision for certain parcels to be vested in the director of the county agency responsible for land use or another county officer. Part III: Amends the calculation of impact fees for certain developments. (CD1) ***

SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"**§205- Private covenants; residentially zoned lots; urban district.** (a) No private covenant for a residentially zoned lot within an urban district recorded after the effective date of this Act shall limit the:

(1) Number of accessory dwelling units on that residentially zoned lot below the amount allowed pursuant to section 46- ; or

(2) Long-term rental of residential units on that residentially zoned lot.

(b) This section shall not apply to any private covenants recorded before the effective date of this Act.

(c) For purposes of this section, "residentially zoned lot" means a zoning lot in a county zoning district that is principally reserved for single-family and two-family detached dwellings. "Residentially zoned lot" does not include a lot in a county zoning district that is intended for rural, low density residential development, and open space preservation."

SB 2919 SD2 HD2 CD1

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the district court in *Hawaii Legal Short-Term Rental Alliance v. City and County of*

Honolulu, No. 22-cv-247-DKW-RT (D. Haw., 2022), permanently enjoined the city and county of Honolulu from enforcing Ordinance No. 22-7, insofar as it prohibited thirty- to eighty-nine-day home rentals, or the advertisement of these rentals, in any district on Oahu. Notwithstanding, it is the legislature's intent to honor and wholeheartedly support the home rule authority statutorily provided to the counties relating to zoning to ensure that the counties are able to guide the overall future development of their local jurisdictions in a manner they deem fit, using the tools available to the counties to put their general plans into effect in an orderly manner.

Accordingly, the purpose of this Act is to:

(1) Clarify the counties' authority to regulate by zoning ordinance the time, place, manner, and duration in which uses of land and structures may take place;

(2) Clarify that uses that include the provision of transient accommodations are not considered residential uses and may be phased out or amortized by the counties; and

(3) Expand the scope of the transient accommodations tax law to include certain shelters and vehicles with sleeping accommodations.

BILLS THAT DID NOT PASS

Among other things, bills that did not pass included proposals to:

1) Establish an ombudsman;
2) License managers;
3) Require board training;
4) Eliminate the option to give a proxy to the board;
5) Eliminate the use of proxies altogether;
6) Limit the award of attorney's fees; and
7) Restrict enforcement of the governing documents.

Some of these bills may be discussed in the context of being representative of industry-related issues that come before the legislature. Insurance-related issues have been the subject of a recent seminar and are largely omitted here.

CASE LAW

Any condominium association that has obtained title through foreclosure of a unit that remains subject to a mortgage should be aware of the Hawaii Supreme Court decision in Nationstar Mortgage., LLC v. Association of Apartment Owners of Elima Lani Condos., 152 Hawai'i 406, 526 P.3d 383 (Haw. 2023). The Elima Lani decision addresses the interpretation and application of Hawaii Revised Statutes Section 514B-146(n). That subsection provides as follows:

> (n) After any judicial or nonjudicial foreclosure proceeding in which the association acquires title to the unit, any excess rental income received by the association from the unit shall be paid to existing lien holders based on the priority of lien, and not on a pro rata basis, and shall be applied to the benefit of the unit owner. For purposes of this subsection, excess rental income shall be any net income received by the association after a court has issued a final judgment determining the priority of a senior mortgagee and after paying, crediting, or reimbursing the association or a third party for:
> (1) The lien for delinquent assessments pursuant to subsections (a) and (b);
> (2) Any maintenance fee delinquency against the unit;
> (3) Attorney's fees and other collection costs related to the association's foreclosure of the unit; or
> (4) Any costs incurred by the association for the rental, repair, maintenance, or rehabilitation of the unit while the association is in possession of the unit including monthly association maintenance fees, management fees, real estate commissions, cleaning and repair expenses for the unit, and general excise taxes paid on rental income;
>
> provided that the lien for delinquent assessments under paragraph (1) shall be paid, credited, or reimbursed first.

Thus, a condominium association that obtained title to a unit through lien foreclosure is treated differently from other such owners if the unit remains subject to a mortgage.

An issue can arise when a lender's mortgage lien is foreclosed. Some lenders have taken the position that an association should disgorge rents received *before* judgment is entered foreclosing the mortgage lien.

The Supreme Court decided that: "Prior to such a judgment, the association's interest is unaffected." If Section 514B-146(n) does not affect the Association's property interest before a lender obtains judgment foreclosing its mortgage lien, then safety may be found in disclaiming the entitlement to rents received by a commissioner after the lender's lien is foreclosed. That remains to be determined but it does follow logically.

Even if an association disclaims entitlement to rents received by a commissioner after a lender forecloses, it may want the commissioner to pay common expenses that accrue during the tenure of the commissioner. The following passage from the Elima Lani decision provides a basis for making the request.

> Because HRS § 514B-146(n) displaces the equitable principles that would normally govern allocation of rent in a proceeding where a commissioner is appointed, we do not reach AOAO's argument that the circuit court should have considered its request to be awarded the association fees that accrued while the Commissioner was in possession. However, we note as a general principle that where HRS § 514B-146(n) does not apply, a circuit court should consider the equities and allocate rents accordingly. Although rents

collected by a foreclosure commissioner will normally be awarded to the secured party for whose benefit the proceeding was instituted, in some cases equity may require a different result.

The question then may be whether the relevant equities relate exclusively to the period during which the commissioner serves versus whether the whole of the association's tenure is considered. More litigation will likely reveal the answer.