Testimony of the Hawai'i Real Estate Commission

Before the
House Committee on Consumer Protection & Commerce
Wednesday, March 12, 2025
2:00 p.m.
Conference Room 329 and Videoconference

On the following measure:
S.B. 146 SD1, RELATING TO CONDOMINIUMS

Chair Matayoshi and Members of the Committee:

My name is Derrick Yamane, and I am the Chairperson of the Hawai'i Real Estate Commission (Commission). The Commission offers comments on this bill.

The purpose of this bill is to amend the conditions and procedures of alternative dispute resolution methods for condominium-related disputes.

This bill establishes minimum qualifications of mediators, arbitrators, and evaluators who provide alternative dispute resolution supported by the Condominium Education Trust Fund (CETF). The Commission takes no position on these requirements specified under proposed section 514B-G, but notes that it does not contract with individual mediators; and instead, contracts with mediation providers to provide alternative dispute resolution supported by the CETF.

As proposed section 514B-F provides for the CETF to support disputes submitted to "early neutral evaluation," the Commission kindly requests a delayed effective date of July 1, 2026, to provide additional time to amend its existing contracts with mediation providers, or to draft and procure new contracts, as appropriate.

Thank you for the opportunity to testify on this bill.

HAWAII LEGISLATIVE
ACTION COMMITTEE
community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

March 10, 2025

Honorable Scot Z. Matayoshi
Honorable Cory M. Chun
Committee on Consumer Protection & Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **SB 146 SD1 SUPPORT**

Dear Chair Matayoshi, Vice Chair Chun and Committee Members:

CAI supports SB 146 SD1. SB 146 SD1 will protect consumers by improving alternative dispute resolution processes for condominium-related disputes.

SB 146 SD1 clarifies the law and makes law changes that are warranted based on experience. SB 146 SD1 also includes conforming amendments.

Notably, complaints about the assessment of fines are effectively addressed. SB 146 SD1 prohibits the reported practice of charging attorneys' fees to collect a disputed fine.

SB 146 SD1 requires fines to be reasonable, and notice of the assessment of a fine must conform to due process requirements. An appeal process must be provided, and remaining disputes will be finally resolved by the small claims court.

For disputes about matters other than fines, SB 146 SD1 changes existing law by making early neutral evaluation the next step for disputes that are not settled in mediation. Early neutral evaluation supplants **non-**binding arbitration.

Early neutral evaluation differs from mediation, even though mediation can have an evaluative component. Forms of early neutral evaluation are presently used by major alternative dispute resolution companies, like the American Arbitration Association[1] and Dispute Prevention & Resolution, Inc.[2] Courts[3] and the federal government use early neutral evaluation as well.[4]

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[1]https://www.adr.org/sites/default/files/document_repository/Early_Neutral_Evaluation.pdf

[2] https://dprhawaii.com/services/

[3] For example, https://cand.uscourts.gov/about/court-programs/alternative-dispute-resolution-adr/early-neutral-evaluation-ene/, and https://mncourts.gov/Help-Topics/ENE-ECM.aspx

[4] https://www.adr.gov/guidance/adrguide-home/11-odra-ene/

The value of introducing early neutral evaluation into the dispute resolution process is that it will enable a fair consideration of the merits of a claim or defense without the burdens of litigation. Only the most resolute disputants will carry a dispute forward after first attempting mediation, and then also obtaining a reasoned decision by an experienced evaluator.

SB 146 SD1 provides that:

> (f) The evaluation process shall be determined by the evaluator; provided that every evaluation process shall include the reasonable opportunity for each party to the dispute to:
>
> (1) Submit a written position statement, together with supporting declarations or exhibits;
>
> (2) Submit a written response to the position statement of any other party; and
>
> (3) Set forth the essential points upon which an asserted claim or defense is based at an informal hearing convened by the evaluator; provided that the rules of evidence, except those concerning privileges, shall not apply at the hearing.
>
> (g) Within ninety days following completion of the hearing, the evaluator shall provide the parties with a written evaluation of the claims and defenses presented by the parties in their written statements and oral presentations. The evaluation shall consist of:
>
> (1) A reasoned decision, determining the prevailing party and what relief, if any, should be granted; and
>
> (2) A separate document, containing an award of reasonable attorneys' fees and costs and other expenses to the prevailing party.
>
> (h) The evaluator's timely written evaluation shall:
>
> (1) Bind the parties with respect to the evaluator's award of attorneys' fees and costs and other expenses in connection with the evaluation process; and
>
> (2) Serve as the basis for an award of all reasonable attorneys' fees and costs and other expenses to the prevailing party in any action or proceeding relating to the subject matter of the dispute whenever that party is also the party determined by the evaluator to have been the prevailing party.

Early neutral evaluation goes well beyond mediation, and provides parties with an expert assessment of the probable outcome of a dispute after an evidentiary hearing. SB 146 SD1 incentivizes dispute resolution before the expense, inconvenience and uncertainty of formal adjudication.

Exposure to both mediation and early neutral evaluation before proceeding to litigation or binding arbitration will also prevent parties from proceeding unaware of the risks. The laws, contractual provisions, and standards applicable to a dispute, will inevitably be clear by that point.

SB 146 SD1 substantially lowers the fee to participate in mediation, and authorizes waiver of the fee altogether if the fee poses an unreasonable economic burden. SB 146 SD1 promotes easy access to alternative dispute resolution processes and is user friendly.

SB 146 SD1 leaves open the amount of support to provide for mediation, early neutral evaluation and binding arbitration. **The Committee is requested to subsidize these processes robustly.** The condominium education trust fund is funded by developers and condominium owners, so a general fund appropriation is not required.

It is important to note that condominium-related disputes loom larger in the press than in the real world. The Real Estate Commission's Annual Report for 2024 ("Report") (DC 153) details that there were **20** facilitative mediations and **41** evaluative mediations last year. Report at 31. The Report identified 1649 registered condominium associations, representing 169,574 units (Report at 32), indicating an entirely manageable volume of complaint. Interestingly, 48% of new residential condominium projects in 2024 were limited to 15 units or less. Report at 30.

SB 146 SD1 provides a true safe harbor against exposure to attorneys' fees and costs in litigation or binding arbitration.

The current "safe harbor" is illusory. It is conditioned upon proof that an owner "made a good faith effort to resolve the dispute" in mediation or non-binding arbitration.[5]

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[5] Per Hawaii Revised Statutes §514B-157(b):

> If any claim by an owner is not substantiated in any court action against an association, any of its officers or directors, or its board to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an association shall be awarded to the association, unless before filing the action in court the owner has first submitted the claim to mediation, or to arbitration under subpart D, and made a good faith effort to resolve the dispute under any of those procedures.

Evidence of conduct in mediation is "not admissible."[6] Thus, "good faith" in mediation cannot be proven. The typical prevailing party standard generally applies to litigated claims. Early neutral evaluation supplants non-binding arbitration in SB 146 SD1 and the evaluator determines the prevailing party.

Moreover, current law is unjust. Taken at face value, an owner could engage an association in expensive, meritless litigation with impunity by *simply sitting through a three-hour mediation*. Owners pay the expenses of an association. Those innocent consumers should not be expected to pay for the litigation of meritless claims.

Condominium law already favors condominium owners who seek to vindicate their rights. The special processes available to condominium owners are unavailable to owners who do not live in an association. It is reasonable to expect condominium owners to make the most of those processes.

There are nonetheless critics of the remedial scheme. As noted in the article *Challenges to Condominium Self Governance*, Hawaii Bar Journal (November 2017):

> The piece that is perceived to be missing in the remedial scheme is a remedy that does not entail risk or effort.
>
> That missing piece must be understood to relate solely to the exercise of private civil remedies regarding privately owned real property, because the Commission already has substantial statutory and rulemaking authority to vindicate the public interest. Laws of general application can be passed during annual legislative sessions as well.

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[6] The Hawaii Rules of Evidence provide as follows:

> Rule 408 Compromise, offers to compromise, and mediation proceedings. Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, or (3) mediation or attempts to mediate a claim which was disputed, is not admissible to prove liability for or invalidity of the claim or its amount. **Evidence of conduct or statements made in compromise negotiations or mediation proceedings is likewise not admissible.** This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations or mediation proceedings. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. (Emphasis added)

> It is the private grievances of individual condominium owners that owners must pursue on their own. The justification for government action in favor of one party to a private condominium dispute has yet to be established.

SB 146 SD1 enhances the efficiency of the remedial scheme.

Early neutral evaluation will be less formal, less expensive, quicker and likely as predictive of a trial outcome as **non-**binding arbitration. In practice, **non-**binding arbitration can be every bit as formal, burdensome and expensive as litigation. The design of SB 146 SD1 incentivizes the settlement of disputes at a lower level of intensity, burden and expense.

Support for voluntary **binding** arbitration is preserved. The value of an expensive, **non-**binding arbitration process, however, the result of which can be rejected, is limited.

SB 146 SD1 authorizes the Real Estate Commission to establish the qualifications of mediators, arbitrators and evaluators. **The Committee is requested to set a substantial base level of experience to serve and then allow the Commission to consider exceptional circumstances.**

SB 146 SD1 requires disclosures by mediators, evaluators and arbitrators, and sets standards for those disclosures. Remedies are provided for undisclosed matters.

A variety of essentially conforming amendments are included in SB 146 SD1. Without limitation, certain language in Hawaii Revised Statutes §514B-106 is omitted because it is superfluous and certain unwieldy language in §514B-146 is clarified, operationalized and updated in SB 146 SD1.

That said, new §514B-E(a)(1) contains an error. It conditions support for binding arbitration upon first submitting the dispute "to an evaluative form of mediation pursuant to section 514B-F;" the error being that mediation is prescribed in section 514B-**D**. Early neutral evaluation (514B-F) is **not** a form of mediation. Mediated disputes should be eligible for support. Early neutral evaluation should not be required if parties agree to binding arbitration.

CAI respectfully requests the Committee to pass SB 146 SD1.

CAI Legislative Action Committee, by

Philip Nerney

Its Chair

SB-146-SD-1
Submitted on: 3/10/2025 8:29:14 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mark McKellar	Law Offices of Mark K. McKellar, LLLC	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 ("SB 146").

SB 146 will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A bill of this magnitude, which will drastically impact the rights of condominium associations and their members, should have been circulated for comment by members of the community association industry before being presented to the Legislature in the form of a bill, but it was not.

This bill should be deferred for that reason alone. It is unconscionable to pass major legislation that will not only substantially impair the rights of associations and their members but also repeal a statutory right that has been in place since 1978 without seeking input from the community association industry.

A. SB 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by requesting early neutral evaluation. It will leave associations without legal recourse while owners engage in covenant violations which may include making unauthorized alterations and additions, causing disturbances, or preventing an association's contractor from accessing their units to repair the common elements.

B. The Bill Eliminates a Statutory Right That Has Existed Since 1978.

For absolutely no good reason, SB 146 will repeal HRS Section 514B-157 which expressly authorizes condominium associations to demand payment of attorneys' fees when enforcing covenants and collecting assessments. The statutory right to demand fees has been in the law since HRS Section 514A-94 took effect on January 1, 1978. The repeal of HRS Section 514B-157 will substantially hinder the ability of associations to collect attorneys' fees from owners who violate the covenants and fail to pay assessments. When those fees cannot be recovered from the defaulting owners or owners who breach the covenants, they are paid by all owners, as a common expense. This is unfair to those owners who abide by the covenants and timely pay their assessments.

C. SB 146 Will Deprive Associations and Owners of Due Process.

SB 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process. It may also constitute an impairment of contracts because it conflicts with the bylaws of many associations.

D. SB 146 Will Make it Practically Impossible for Associations to Impose Fines.

SB 146 adds a new provision on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. SB 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b) provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable". This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon

appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while SB 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, SB 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE SB 146 and urge your Committee to defer this measure.

Respectfully submitted,

Mark McKellar

SB-146-SD-1
Submitted on: 3/11/2025 10:35:19 AM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Hawaii First Realty	Support	In Person

Comments:

SB 146 provides fairness to owners and associations in dispute resolution.

SB-146-SD-1
Submitted on: 3/10/2025 3:20:20 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Oppose	Written Testimony Only

Comments:

I am owner occupant of a high rise condo. I am also a member of CAI. I discovered their position on this bill when I reviewed earlier testimony. I disagree with their position.

This is a bad bill. It will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

SB146 will make it very difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by simply "requesting" early neutral evaluation. This bill will leave associations without legal recourse while owners continue to engage in covenant violations which may include damaging or destroying the common elements, making unauthorized alterations and additions, causing disturbances, or preventing the association's contractor from accessing their units to repair the common elements.

We don't need this. We have enough problems with insurance fees, major maintenance, spalling, window replacement, pipe replacement, leaks, explaining to owners on fixed income why their costs are going up, and now you want to stick this to us.

This bill, if enacted, will increase lawsuits. More lawsuits and our insurance costs go up. Or worse, policies are canceled. Early neutral evaluations may have a major effect on whether an association will be able to recover its attorneys' fees in enforcing its governing documents, which can exceed $100,000 in heavily litigated disputes, Section 514B-A(c) will require associations to expend significant time and resources preparing for and presenting its position in early neutral evaluations. The early neutral evaluations will become as important and as costly as binding arbitrations. Some insurance companies will not pay binding settlement costs unless they agreed in advance to the binding arbitration.

The association may be precluded from seeking reimbursement of attorneys' fees and costs until the fine becomes "collectible." This may require associations to wait months after the covenants are violated before collecting attorneys' fees. In the meantime, the Association must pay the

attorneys' fees as a common expense, which impacts all owners. Important projects to maintain the building will be pit on hold because the funds aren't there.

The bill does not give compelling reasons for the changes. I believe the drafters do not understand how condos operate in real life. Please defer this bill.

SB-146-SD-1
Submitted on: 3/10/2025 6:39:43 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Anne Anderson	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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A bill of this magnitude, which will drastically impact the rights of condominium associations and their members, should have been circulated for comment by members of the community association industry before being presented to the Legislature in the form of a bill, but it was not.

This bill should be deferred for that reason alone. It is unconscionable to pass major legislation that will not only substantially impair the rights of associations and their members but also repeal a statutory right that has been in place since 1978 without seeking input from the community association industry.

A. SB 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by requesting early neutral evaluation. It will leave associations without legal recourse while owners engage in covenant violations which may include making unauthorized alterations and additions, causing disturbances, or preventing an association's contractor from accessing their units to repair the common elements.

B. The Bill Eliminates a Statutory Right That Has Existed Since 1978.

For absolutely no good reason, SB 146 will repeal HRS Section 514B-157 which expressly authorizes condominium associations to demand payment of attorneys' fees when enforcing covenants and collecting assessments. The statutory right to demand fees has been in the law since HRS Section 514A-94 took effect on January 1, 1978. The repeal of HRS Section 514B-157 will substantially hinder the ability of associations to collect attorneys' fees from owners who violate the covenants and fail to pay assessments. When those fees cannot be recovered from the defaulting owners or owners who breach the covenants, they are paid by all owners, as a common expense. This is unfair to those owners who abide by the covenants and timely pay their assessments.

C. SB 146 Will Deprive Associations and Owners of Due Process.

SB 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process. It may also constitute an impairment of contracts because it conflicts with the bylaws of many associations.

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SB 146 adds a new provision on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

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appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

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Furthermore, while SB 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, SB 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

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The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE SB 146 and urge your Committee to defer this measure.

Respectfully submitted,

Anne Anderson

SB-146-SD-1
Submitted on: 3/10/2025 6:51:35 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Joe M Taylor	Individual	Oppose	Written Testimony Only

Comments:

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E. SB 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b) provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable". This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon

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Furthermore, while SB 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, SB 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

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The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE SB 146 and urge your Committee to defer this measure.

Respectfully submitted
Joe Taylor

SB-146-SD-1
Submitted on: 3/10/2025 7:21:55 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Miri Yi	Individual	Support	Written Testimony Only

Comments:

Testimony in Support of SB146

Measure Title:	RELATING TO CONDOMINIUMS.
Report Title:	Condominiums; Alternative Dispute Resolution; Mediation
Description:	Amends the conditions and procedures of alternative dispute resolution methods for condominium-related disputes. Effective 7/1/2050. (SD1)

Aloha e Honorable Committee Chairs and Committee Members,

My name is Miri Yi, and I am a condominium owner in strong support of SB146. I respectfully urge you to pass this bill with additional language to include the following protections, many of which I have personally experienced as ongoing concerns in condominium and homeowners' associations:

1. Prevention of Retaliatory and Unequal Enforcement

- Unequal enforcement of covenants and false violations are often used as tools for retaliation, harassment, or intimidation against homeowners who ask questions, request financial documents, run for Board positions, or engage in protected activities.
- Enforcement of association rules should be applied fairly and consistently to prevent discrimination and abuse.

2. Limitations on Attorney's Fees and Late Fees

- Attorney's fees and late fees often exceed the original fine or assessment, creating severe financial burdens on homeowners.
- Homeowners should not be subjected to excessive fees that create a cycle of inescapable debt.
- The purpose of an association should be to serve its members, not to financially harm them or facilitate unjust loss of their homes.

3. Protection of Homeowners' Rights

- No provision in the governing documents should override a member's constitutional rights, including free speech and legal protections under state and federal law.
- All fair housing, fair collections, fair lending, and consumer protection laws should apply equally to all association members.

4. Clear and Reasonable Notice Requirements

- Homeowners must be provided reasonable time to correct alleged violations before fines are imposed.
- All violations and fines must be documented and readily accessible to members.
- A minimum 30-day written notice should be required for any fine, and homeowners should have 30 days to dispute the charge.

5. Fair and Transparent Dispute Resolution Process

- Fines, late fees, and interest should cease accruing once a dispute is formally filed until it is resolved through a neutral party such as small claims court or a designated state agency.
- The Board must allow a member to appeal a violation at the next scheduled meeting, with the appeal placed at the beginning of the agenda.
- Each Board Member's vote on an appeal should be recorded and made publicly available.
- No fines, fees, or attorney's fees should be imposed before an official resolution through the proper legal channels.

6. Reasonable Limits on Attorney's Fees

- Attorney fees should not exceed 10% of the original amount owed, excluding additional penalties or interest.
- Legal fees should only be assessed after a case has been decided in small claims court or a designated state office, and all appeals have been exhausted.

7. Judicial Oversight Over HOA Boards

- Any disputed violation or fine should be reviewed by small claims court or a state agency before enforcement.
- AOAO/HOA Boards should not act as judges in disputes where they have a direct interest in the outcome.

8. Transparency and Access to HOA Records

- Any association records or evidence to be used in a dispute must be provided to the homeowner at least 30 days before a hearing.
- Records of covenant violations and fines should be accessible to all members, including the name of the complainant, the basis of the complaint, and all related communications between the Board, management, and involved parties.

By incorporating these protections, SB146 can promote fair, transparent, and ethical governance in AOAO/HOAs, preventing financial exploitation, unjust penalties, and retaliatory practices. I strongly urge you to pass this bill with these additional safeguards to protect homeowners across Hawaii.

Mahalo for your time and consideration and the opportunity to testify in support of this important bill.

Very Sincerely,
Miri Yi

Honolulu, Hawaii 96818

SB-146-SD-1
Submitted on: 3/10/2025 7:25:59 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
mary freeman	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 ("SB 146").

SB 146 will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A bill of this magnitude, which will drastically impact the rights of condominium associations and their members, should have been circulated for comment by members of the community association industry before being presented to the Legislature in the form of a bill, but it was not.

This bill should be deferred for that reason alone. It is unconscionable to pass major legislation that will not only substantially impair the rights of associations and their members but also repeal a statutory right that has been in place since 1978 without seeking input from the community association industry.

A. SB 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by requesting early neutral evaluation. It will leave associations without legal recourse while owners engage in covenant violations which may include making unauthorized alterations and additions, causing disturbances, or preventing an association's contractor from accessing their units to repair the common elements.

B. The Bill Eliminates a Statutory Right That Has Existed Since 1978.

For absolutely no good reason, SB 146 will repeal HRS Section 514B-157 which expressly authorizes condominium associations to demand payment of attorneys' fees when enforcing covenants and collecting assessments. The statutory right to demand fees has been in the law since HRS Section 514A-94 took effect on January 1, 1978. The repeal of HRS Section 514B-157 will substantially hinder the ability of associations to collect attorneys' fees from owners who violate the covenants and fail to pay assessments. When those fees cannot be recovered from the defaulting owners or owners who breach the covenants, they are paid by all owners, as a common expense. This is unfair to those owners who abide by the covenants and timely pay their assessments.

C. SB 146 Will Deprive Associations and Owners of Due Process.

SB 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process. It may also constitute an impairment of contracts because it conflicts with the bylaws of many associations.

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SB 146 adds a new provision on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

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For the foregoing reasons, I STRONGLY OPPOSE SB 146 and urge your Committee to defer this measure.

Respectfully submitted,

Sincerely,

Mary Freman

Ewa Beach

SB-146-SD-1
Submitted on: 3/10/2025 7:27:50 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
John Toalson	Individual	Oppose	Written Testimony Only

Comments:

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SB 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process. It may also constitute an impairment of contracts because it conflicts with the bylaws of many associations.

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For the foregoing reasons, I STRONGLY OPPOSE SB 146 and urge your Committee to defer this measure.

Respectfully submitted,

John Toalson

SB-146-SD-1
Submitted on: 3/10/2025 7:54:38 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Rachel Glanstein	AOAO Lakeview Sands	Oppose	Written Testimony Only

Comments:

Aloha Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

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For the foregoing reasons, I STRONGLY OPPOSE SB 146 and urge your Committee to defer this measure.

Mahalo,

Rachel Glanstein

SB-146-SD-1
Submitted on: 3/10/2025 9:40:43 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jessica Herzog	Individual	Oppose	Remotely Via Zoom

Comments:

Aloha Honorable Chairs and Members of the Committee on Consumer Protection and Commerce,

My name is Jessica Herzog, and I am here to share my personal experience with condominium mismanagement, embezzlement, retaliation, slander, and harassment—an experience that, unfortunately, is far from unique. Across Hawai‘i, hundreds of thousands of condo owners and residents are trapped in a system that enables corruption and financial abuse. This is not just a story of individual misconduct; it is a systemic failure that demands immediate legislative action.

After uncovering embezzlement within my own association, I began reaching out to legislators just last year. In doing so, I encountered countless other owners who have been fighting for the same reforms for over two decades. Despite their tireless efforts, nothing has changed. This is not merely a failure of individual condo boards or management companies, it is a legislative failure, perpetuated by inaction and a lack of accountability. **It is time for this committee to acknowledge this failure and take meaningful steps to correct it.**

For decades, condo owners have called for the establishment of a proper State Condo Commission with the authority to investigate fraud, remove corrupt board members, and enforce financial transparency. Instead, we are presented with yet another weak bill that prioritizes the interests of the industry over the consumers who fund it. SB146 SD1, as written, lacks the enforcement power necessary to protect homeowners. It is yet another gift to the very industry that preys on us.

The question before this committee is simple: Will you stand up to the industry and make a difference, or will you continue the legacy of legislative failure?? If you are serious about addressing this issue, you must either create a proper regulatory commission or go back to the drawing board and give this bill the enforcement power it so desperately needs.

Critical Amendments Needed

1. Establish a State HOA Office with Enforcement Authority
This office should be housed under the Consumer Protection Division of the Attorney General’s Office and equipped with the power to investigate misconduct, impose fines, and remove corrupt board members or management companies. Homeowners need an enforcement body—not another mediation process that wastes time and money while abuse continues unchecked.

2. Provide Direct Legal Interventions for Homeowners Facing Retaliation and Mismanagement
Condo owners who report fraud or mismanagement should not be forced to pay for arbitration or mediation just to have their voices heard. The State HOA Office must have the authority to intervene on behalf of owners who face retaliation for demanding financial accountability.

3. Mandate the Separation of Financial and Property Management Roles
Association funds must be managed by licensed accountants, not property managers who benefit from conflicts of interest. No single entity should control both finances and property management—this is a direct invitation for fraud and abuse.

Why SB146 SD1 Falls Short

While this bill provides structured mediation and arbitration, it **fails to create accountability for condo boards and management firms that abuse their power.** Condo owners must be protected *before* mismanagement leads to financial devastation, not merely given an alternative dispute resolution process *after* the damage has already been done.

Final Thoughts

Hawai‘i’s condo owners deserve real protections, not empty bureaucracy. This committee has a duty to stand up to the industry and finally put homeowners first. Strengthen this bill with the enforcement powers it needs or please have the courage to reject it outright and demand stronger legislation. If you truly care about the people of this state, then give us an enforcement body with real power—not another delay tactic that benefits only the condo management industry.

Furthermore, **I strongly urge the legislature to form a citizen Task Force or Advisory Committee to reevaluate the entire system.** Hawai‘i does not need another committee stacked with insiders who have a vested interest in maintaining the status quo. *We need a Task Force composed of those who have suffered under this broken system—because only those who have lived through it truly understand how to fix it.* There is an **inherent conflict of interest** when those who benefit from this broken system are the ones tasked with reforming it.

This failed experiment by developers to create a separate government for homeowners needs to be completely reevaluated. If you truly wish to serve the masses rather than the handful in the industry, then you must ensure that any new commission is driven by those who have experienced the real consequences of mismanagement—not those who profit from it. As a well qualified condo owner with prior public service experience, I offer to volunteer and participate should you see fit to take such bold action in support of your constituents.

Mahalo for your time and consideration. I am eager to discuss this further and provide additional testimony to any interested representative on this bipartisan issue.

Respectfully,
Jessica Herzog

Condo Owner, Notary Public
Member of the National Association of Parliamentarians
mssc403@gmail.com | 707.340.5786
www.leewardrepair.com/cond

SB-146-SD-1
Submitted on: 3/11/2025 4:13:34 AM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Targgart	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 ("SB 146").

SB 146 will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A bill of this magnitude, which will drastically impact the rights of condominium associations and their members, should have been circulated for comment by members of the community association industry before being presented to the Legislature in the form of a bill, but it was not.

This bill should be deferred for that reason alone. It is unconscionable to pass major legislation that will not only substantially impair the rights of associations and their members but also repeal a statutory right that has been in place since 1978 without seeking input from the community association industry.

A. SB 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by requesting early neutral evaluation. It will leave associations without legal recourse while owners engage in covenant violations which may include making unauthorized alterations and additions, causing disturbances, or preventing an association's contractor from accessing their units to repair the common elements.

B. The Bill Eliminates a Statutory Right That Has Existed Since 1978.

For absolutely no good reason, SB 146 will repeal HRS Section 514B-157 which expressly authorizes condominium associations to demand payment of attorneys' fees when enforcing covenants and collecting assessments. The statutory right to demand fees has been in the law since HRS Section 514A-94 took effect on January 1, 1978. The repeal of HRS Section 514B-157 will substantially hinder the ability of associations to collect attorneys' fees from owners who violate the covenants and fail to pay assessments. When those fees cannot be recovered from the defaulting owners or owners who breach the covenants, they are paid by all owners, as a common expense. This is unfair to those owners who abide by the covenants and timely pay their assessments.

C. SB 146 Will Deprive Associations and Owners of Due Process.

SB 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process. It may also constitute an impairment of contracts because it conflicts with the bylaws of many associations.

D. SB 146 Will Make it Practically Impossible for Associations to Impose Fines.

SB 146 adds a new provision on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. SB 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b) provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable". This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon

appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while SB 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, SB 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

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The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE SB 146 and urge your Committee to defer this measure.

Respectfully submitted,

Michael Targgart

SB-146-SD-1
Submitted on: 3/11/2025 5:22:08 AM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gregory Misakian	Individual	Oppose	Remotely Via Zoom

Comments:

As I previously testified, SB146 SD1 is not well thought out and is not the answer to help condominium owners resolve issues and concerns.

If you have already tried mediation and it didn't work, why would you want to try it again and at a higher cost and higher risk, with more attorney's fees involved. Calling a mediation another name is just a creative way for attorneys to make more money. There are already two mediation options available, facilitative mediation and evaluative mediation, and evaluative mediation already does what neutral evaluation is suggested to do.

Mediation has already proven to not be successful in the majority of condominium disputes in Hawaii with established data presented, so continuing down this path is not in the best interest of condominium owners.

Why are you striking out this important section meant to provide accountability for Board members?

[Any violation by a board or its officers or members of the mandatory provisions of section 514B-161 or 514B-162 may constitute a violation of the fiduciary duty owed pursuant to this subsection; provided that a board member may avoid liability under this subsection by indicating in writing the board member's disagreement with such board action or rescinding or withdrawing the violating conduct within forty-five days of the occurrence of the initial violation.]"

HB890 and its companion bill SB1265, which will establish an Ombudsman's Office for Condominium Associations at no cost to the State of Hawaii, is the only real solution to finally address the serious issues of misconduct and corruption at condominium associations throughout Hawaii, and the many predatory attorneys who earn their living on the backs of condominium owners.

While I see many oppose SB146, it seems to be that politically charged one that our legislators will push through no matter what. With large campaign donations from some supporting the decision makers, why not pass it to ensure more large campaign donations.

The residents of Hawaii will not forget the continuing saga of how poorly our legislators have treated condominium owners in 2025. The HGIA loan bills, HPIA insurance bills and other

insurance bills, will also not be the savior for this session, as all of these are flawed. But our legislators continue to push them through, so you can say "we did something for condominium owners."

Gregory Misakian

SB-146-SD-1
Submitted on: 3/11/2025 5:32:10 AM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lance S. Fujisaki	Individual	Oppose	Written Testimony Only

Comments:

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Respectfully submitted,

Lance Fujisaki

SB-146-SD-1
Submitted on: 3/11/2025 8:30:29 AM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Paul A. Ireland Koftinow	Individual	Oppose	In Person

Comments:

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Respectfully submitted,

Paul A. Ireland Koftinow

SB-146-SD-1
Submitted on: 3/11/2025 8:34:32 AM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laura Bearden	Individual	Oppose	Written Testimony Only

Comments:

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Laura Bearden

SB-146-SD-1
Submitted on: 3/11/2025 9:25:33 AM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carol Walker	Individual	Oppose	Written Testimony Only

Comments:

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C. SB 146 Will Deprive Associations and Owners of Due Process.

SB 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process. It may also constitute an impairment of contracts because it conflicts with the bylaws of many associations.

D. SB 146 Will Make it Practically Impossible for Associations to Impose Fines.

SB 146 adds a new provision on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. SB 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b) provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable". This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon

appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while SB 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, SB 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE SB 146 and urge your Committee to defer this measure.

Respectfully submitted,

Carol Walker

SB-146-SD-1
Submitted on: 3/11/2025 9:26:27 AM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Laurie Sokach	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 ("SB 146").

SB 146 will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A bill of this magnitude, which will drastically impact the rights of condominium associations and their members, should have been circulated for comment by members of the community association industry before being presented to the Legislature in the form of a bill, but it was not.

This bill should be deferred for that reason alone. It is unconscionable to pass major legislation that will not only substantially impair the rights of associations and their members but also repeal a statutory right that has been in place since 1978 without seeking input from the community association industry.

A. SB 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by requesting early neutral evaluation. It will leave associations without legal recourse while owners engage in covenant violations which may include making unauthorized alterations and additions, causing disturbances, or preventing an association's contractor from accessing their units to repair the common elements.

B. The Bill Eliminates a Statutory Right That Has Existed Since 1978.

For absolutely no good reason, SB 146 will repeal HRS Section 514B-157 which expressly authorizes condominium associations to demand payment of attorneys' fees when enforcing covenants and collecting assessments. The statutory right to demand fees has been in the law since HRS Section 514A-94 took effect on January 1, 1978. The repeal of HRS Section 514B-157 will substantially hinder the ability of associations to collect attorneys' fees from owners who violate the covenants and fail to pay assessments. When those fees cannot be recovered from the defaulting owners or owners who breach the covenants, they are paid by all owners, as a common expense. This is unfair to those owners who abide by the covenants and timely pay their assessments.

C. SB 146 Will Deprive Associations and Owners of Due Process.

SB 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process. It may also constitute an impairment of contracts because it conflicts with the bylaws of many associations.

D. SB 146 Will Make it Practically Impossible for Associations to Impose Fines.

SB 146 adds a new provision on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. SB 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b) provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable". This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon

appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while SB 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, SB 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE SB 146 and urge your Committee to defer this measure.

Respectfully submitted,

Laurie Sokach AMS, PCAM

Professional Career Association Manager

Kona, Hawaii

SB-146-SD-1
Submitted on: 3/11/2025 9:43:39 AM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kathleen Fleming	Individual	Oppose	Written Testimony Only

Comments:

SB 146 would allow owners with a grievance against their AOAO to stop paying their monthly dues. This is a reversal of the long-standing law to continue paying dues, while owners seek remedies for their complaints. As a AOAO President, I know homeowner associations do not have the financial means to "float" loans to disgruntled owners. Associations rely on those dues to pay the bills, make repairs, etc. While I appreciate owners being able to file in Small Claims court for a ruling, I believe they can do that now, under existing law. Finally, AOAOs must be able to call on legal staff when 90 days of attempting to solve owner issues have failed. We are volunteers. We must be able to turn over difficult cases to our lawyers, after we have made every attempt to arrive at a resolution in-house.

Kathy Fleming, President

Koa Kai Condominiums AOAO

SB-146-SD-1
Submitted on: 3/11/2025 10:24:13 AM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lou Salter	Individual	Oppose	Written Testimony Only

Comments:

THIS BILL NEEDS A MAJOR REVISION

Aloha Honorable Chairs and Members of the Committee on Finance,

My name is **Lou Salter**, and I am a **survivor of condo embezzlement, rising management fees & insurance rates, mismanagement** and **delayed maintenance at my condo property.**. As I've connected with other condo owners across Hawai'i, I've learned that these issues have persisted for decades, with countless residents pleading for protections that have yet to materialize.

This is not just a failure of individual associations—it is a failure of the legislative system itself. For far too long, Hawai'i's lawmakers have allowed the condo industry to operate unchecked, prioritizing the interests of property management companies and developers over the rights of homeowners. The absence of a dedicated condominium commission in our state is a glaring oversight, one that has left hundreds of thousands of residents vulnerable to exploitation. It is unacceptable that we are still fighting for basic consumer protections that should have been established years ago.

Today, this committee has an opportunity to change that. You can choose to stand with homeowners and demand meaningful reform, or you can pass yet another ineffective bill that serves the industry rather than the people it exploits. SB146 SD1, as it stands, is not the solution—it is a distraction.

What SB146 SD1 Fails to Address
SB146 SD1 does not solve the systemic issues plaguing Hawai'i's condo industry. Instead, it pushes homeowners into costly mediation and arbitration processes, forcing them to pay out-of-pocket to resolve disputes that should never have occurred in the first place. This bill offers no real enforcement mechanisms, no accountability for bad actors, and no relief for homeowners who have already suffered under this broken system.

Essential Amendments to Protect Homeowners
If this legislature is serious about addressing the exploitation of condo owners, SB146 SD1 must be rewritten to include the following critical reforms:

- Establish a State HOA Office with Real Enforcement Power

Hawai‘i needs more than an Ombudsman role—it needs an agency under the Consumer Protection Division of the Attorney General’s Office with the authority to investigate misconduct, impose fines, and remove individuals or entities engaging in fraud, retaliation, or financial abuse.

- End Financial Conflicts of Interest

Association funds must be managed exclusively by licensed accountants, not property managers. This change is essential to ensure financial transparency and prevent embezzlement.

- Provide Legal Protections for Homeowners

Homeowners should not be forced to bear the financial burden of legal battles against corrupt boards or management companies. The State HOA Office must have the ability to intervene directly in cases of fraud, abuse, and retaliation.

A Call to Action
The condo industry has resisted change for decades, but this committee has the power to break that cycle. You can reject SB146 SD1 in its current form and demand a bill that truly protects homeowners—or you can allow this broken system to continue preying on thousands of residents across Hawai‘i.

If you are committed to meaningful reform, I urge you to rewrite SB146 SD1 to include real enforcement mechanisms or begin drafting legislation to create a proper Condominium Commission with the authority to hold bad actors accountable. Hawai‘i’s condo owners deserve better than half-measures and empty promises.

The time for action is now. Homeowners across the state are watching, and they are counting on you to stand up for their rights. Please don’t let this opportunity for change slip away.

Mahalo nui loa for your time and consideration.

Respectfully,

Lou Salter
Condo Owner, Waianae

House of Representatives
The Thirty-Third Legislature
Committee on Consumer Protection and Commerce
Wednesday, March 12, 2025
2:00 p.m.

To: Representative Scot Z. Matayoshi, Chair
Re: SB 146 SD 1, Relating to Condominiums

Aloha Chair Scot Matayoshi, Vice-Chair Cory Chun, and Members of the Committee,

Mahalo for the opportunity to testify in support of the *intent* of SB 146 SD 1, but with concerns that are addressed in these comments.

Since 1970, I have resided in associations-governed communities throughout Hawaii. For almost fifty years, I have owned units in condominium associations and served as an officer on three separate associations' boards. For more than a dozen years, I have served as the nexus for many grassroots coalitions of property owners of association-governed communities throughout Hawaii.

On November 2, 2023, Dathan Choy, Condo Specialist with DCCA reported in an email[1]:

> *"Per our records as of today, there are **230,729 units in 3,411 condominium registrations** with six units or more which would generally be required to register their AOUO. These are rough numbers as some of the five or fewer may have merged their AOUOs and would register that AOUO and some condominium registrations have not triggered the 365 day requirement after first sale or held their first association meeting that would then require them to register their AOUO…There are 13,154 units in 5,512 condominium registrations where each condominium registrations is five or fewer units and individually, are exempted from AOUO registration."*

Based on Mr. Choy's calculations in 2023, Hawaii has almost a quarter of a million condominium units in an estimated 9000 associations.

Comparatively, the 2024 *U.S. National and State Statistical Review for Community Association Data*[2] shows that California leads the nation with 51,250 associations. Florida has the second-most associations with 50,100, followed by Texas (22,900), Illinois (19,750), North Carolina (15,050), and New York (14,500).

[1] Please refer to Exhibit A
[2] https://foundation.caionline.org/wp-content/uploads/2025/02/FBStatsReview2025-V2.pdf

Despite the significant differences in the number of associations between the more populous states and Hawaii, Surita "Sue" Savio, President of Insurance Associates which serves over 1000 associations throughout our state, has often said that Hawaii has "more [Directors and Officers insurance] claims than any other state...[and] the highest payout...D&O insurance companies don't like Hawaii." [3,4]

Robin Martin of Insurance Factors similarly stated, "Hawaii and New York are the two most litigious states for D&O," during an association's special meeting regarding insurance for homeowners.[5]

There is correspondence between these local insurance brokers' remarks and reports found in the Real Estate Commission publication, the *Hawaii Condominium Bulletin,*[6,7,8] which were studied, tallied,[9] and revealed that since September 2015 a large majority of the mediation cases reported, 80%, were initiated by owners against their association and/or board.

Additionally, nearly all disputes, over 95%, were disputes about violations or interpretations of HRS 514B or the association's governing documents (e.g., Declaration, ByLaws, House Rules, Resolutions).

Additionally, only 36% of these cases were mediated to an agreement, leaving **more than 3 out of every 5 mediation cases unresolved or withdrawn**, a metric that disputes unsubstantiated claims that "mediations are successful."

In 2024, national third-party surveys conducted by Frontdoor.com[10] and Rocket Mortgage[11] similarly reported the dissatisfaction experienced by residents of association governed communities. Frontdoor.com,[12] a membership service for home repairs and maintenance needs, reported:

- "54% [of surveyed association members] have had negative experiences" with their associations;
- "1 in 3 have had an [association] experience that made them want to leave their community;"
- more than half of [association] members surveyed cited "inconsistent rule enforcement;"

[3] ThinkTech "Condo Insider" program, "How Condo Disputes Can Increase Your Maintenance Fees," September 19, 2019
[4] https://www.youtube.com/watch?v=8wOM10cgYS0&t=353s
[5] April 5, 2023, AOAO Nauru Tower Board Special Meeting
[6] https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2011-2015/
[7] https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2016-2020/
[8] https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2021-2025/
[9] Please refer to Exhibit B for the most recently produced matrix and copies of the most recent issues of the "Mediation Case Summaries" from the *Hawaii Condominium Bulletin,* provided to represent the source of the data.
[10] https://www.frontdoor.com/blog/real-estate/pros-and-cons-of-hoa-what-homeowners-really-think
[11] https://www.rocketmortgage.com/learn/assessing-the-association
[12] https://www.frontdoor.com/blog/real-estate/pros-and-cons-of-hoa-what-homeowners-really-think

- 40% reported "poor communication or unresponsive board" "which left them feeling powerless when it came to important neighborhood decisions;"
- "35% [felt] their [association] fees are not reasonable;" and
- "39% [said] their [association] fees are not used effectively and efficiently."
- "This continuous rise in costs, without a clear improvement in services, leads to further dissatisfaction."

Additionally, Frontdoor.com noted that:

> "Homeowners also face potential fines for breaking the rules or guidelines…One of the most controversial aspects of [associations] is their enforcement of these rules.
>
> In fact, over 1 in 6 homeowners have been fined, often for what they see as minor violations… For instance, a homeowner might be fined for not trimming their bushes to the exact standards set by the [association], even if their yard appears well-maintained…
>
> [F]or more than 1 in 10 respondents, the penalties felt unfair or excessive, adding to frustration" and "14% [said] the fine was unfair and excessive."

A March 2024 report by Rocket Mortgage of its survey of 1001 association governed community residents, including directors, similarly revealed:

- "[Homeowner] associations have increased dues by as much as 300% in certain parts of the country over the past year. In return, homeowners expect to get community benefits;"
- however, "homeowners aren't all happy in [homeowner associations];"
- only 63% of owners surveyed felt that their association honestly handles its finances;
- 31 percent thought that their boards have too much power;
- 40 percent of homeowners and 19 percent of directors believe that their boards are incompetent.
- less than half, 49 percent, said that they are likely to buy in an association governed community again;
- and 10 percent would go as far as "consider selling their homes for reasons related to their [association];" and
- a startling 37 percent of directors said that they disliked having a homeowners association, compared to 57 percent of owners overall.[13]

Even the partial national trade industry group, Community Associations Institute, disclosed in their 2024 "Homeowner Satisfaction Survey"[14] that nearly one of out of every seven (1/7) respondents answered unfavorably to the question, "How satisfied are you with overall services

[13] https://www.rocketmortgage.com/learn/assessing-the-association
[14] https://foundation.caionline.org/research/survey_homeowner/homeowner-satisfaction-survey-dashboard/

across regions and communities?" Further study of their data revealed growing homeowner dissatisfaction over the last five years.

The 2024 responses to that question are In percentages:

33.17%	very good
26.65%	good
26.21%	neutral
9.28%	bad
4.16%	very bad
0.53%	not sure

Hundreds of years ago, William Shakespeare wrote, "*a rose by any other name would smell as sweet*," and for what sometimes seems nearly as long, I have advocated for and supported alternative dispute resolution (ADR) methods for condominium owners. The proposed methods were alternatively called an "ombudsman," a "condo czar," and a "complaints and enforcement officer." Now, a "neutral evaluator" is proposed.

Earlier ADR iterations were supported with the hope that the proposed ADR methods would be viable alternatives to mediation, arbitration, and litigation because "***there should be a robust and meaningful opportunity to come to terms before attorneys fees become a significant factor***."[15]

However, SB 146 SD 1 would **not** enable an "*opportunity to come to terms before attorneys fees become a significant factor,*"[16] and therefore fails the Shakesperean "as sweet" test.

Instead, SB 146 SD 1 appears to create another version of the existing unsuccessful mediation process, thus devaluating for condominium owners and residents the purpose of this measure for an *early* or *neutral* evaluation.

It is not early if mediation is required prior to accessing this new proposed ADR.

As for neutrality, while SB 146 SD 1 seeks to ensure that the evaluator is knowledgeable about the subject matter, a rigorous effort to distance the evaluator from conflicts of interest is lacking.

This concern, if the evaluator or evaluation would truly be "neutral," is significant because it was revealed last year that mediators were imbued with disparaging misinformation about condominium owners during a mediators' class. Please refer to Exhibit C.

[1] Nerney, Philip S. "Professional Mediation of Condominium-Related Disputes," *Hawaii Bar Journal*, July 2015.
[16] Ibid.

An additional concern regarding neutrality is that SB 146 SD 1 does not address the costs and damages incurred by the party injured by the lack of impartiality if that partiality is discovered *after* an evaluation is completed.

These are additional comments regarding SB 146 SD 1:

One of the most egregious complaints made by owners regarding actions by their association is that they were not provided with proper notification of alleged violations. Many of those who lost their homes due to nonjudicial foreclosures made this accusation, rendering it too common to dismiss. Thus, the following addition is suggested:

> *Before taking any action under this section, the board shall give to the unit owner and/or tenant written notice of its intent to collect the assessment owed. The notice shall be sent both by first-class and certified mail, return request requested, with adequate postage to the recipient's address as shown by the records of the association or to an address designated by the owner for the purpose of notification, or, if neither of these is available, to the owner's last known address.*

The following excerpts from Florida's 2024 Statutes[17] are also suggested for consideration:

- *An association may levy reasonable fines for violations of the declaration, association bylaws, or reasonable rules of the association. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.*

- *A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice of the parcel owner's right to a hearing to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, to any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended. Such hearing must be held within 90 days after issuance of the notice before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The committee may hold the hearing by telephone or other electronic means. The notice must include a description of the alleged violation; the specific action required to cure such violation, if applicable; and the*

[17] http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0718/0718.html

hearing date, location, and access information if held by telephone or other electronic means. A parcel owner has the right to attend a hearing by telephone or other electronic means.

- *If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.*

- *If a violation has been cured before the hearing or in the manner specified in the written notice required in paragraph (b) or paragraph (d), a fine or suspension may not be imposed.*

Mahalo for the opportunity to submit these comments regarding SB 146 SD 1.

I support its intent but ask your committee to amend the measure to address my concerns.

EXHIBIT A

Gmail Lila Mower <lila.mower@gmail.com>

number of registered condo units

Kyle-Lee N. Ladao <kladao@dcca.hawaii.gov> Fri, Nov 3, 2023 at 8:36 AM
To: Lila Mower <lila.mower@gmail.com>

Hello Ms. Mower,

I apologize for not forwarding this to you sooner. Here is Dathan's (DCCA) response. Please let me know if you have any other questions. Thank you!

Mahalo,

Kyle Ladao

From: Dathan L Choy <dchoy@dcca.hawaii.gov>
Sent: Thursday, November 2, 2023 3:21 PM
To: Kyle-Lee N. Ladao <kladao@dcca.hawaii.gov>; Kedin C. Kleinhans <kkleinha@dcca.hawaii.gov>
Subject: RE: [EXTERNAL] number of registered condo units

Hi Kyle,

Per our records as of today, there are 230,729 units in 3,411 condominium registrations with six units or more which would *generally* be required to register their AOUO. These are rough numbers as some of the five or fewer may have merged their AOUOs and would register that AOUO and some condominium registrations have not triggered the 365 day requirement after first sale or held their first association meeting that would then require them to register their AOUO. Also, some developers register in phases and then merge all of the phases into a single AOUO. For example, the Honua Kai project was developed in 15 phases representing 1,401 units and the Hu'elani project was developed in 20 phases (some with five or fewer) representing a total of 101 units. Both merged their units into their respective AOUOs. So again, rough numbers in that condominium registrations will not match up to AOUO registrations.

There are 13,154 units in 5,512 condominium registrations where each condominium registrations is five or fewer units and individually, are exempted from AOUO registration. However, as stated before, some of these will have merged associations and registered their AOUO.

We also have no formal data on unregistered projects that never came into our office for a Developer's Public Report to engage in legal sales much less an AOUO registration. We do get questions time to time on those, so we know they exist, but they're largely a black hole in terms of numbers.

Hopefully this assists Lila on her data collection.

- Dathan

EXHIBIT B

TALLY OF MEDIATION CASES AS REPORTED IN
THE HAWAII CONDOMINIUM BULLETIN SINCE 2015
FOLLOWED BY PAGES OF RECENT COPIES OF THOSE CASE SUMMARIES

HI Condo Bulletin	AOAO/BOD V	OWNER V	OWNER V	OWNER V	TOTAL	mediated	mediated	assn did not	owner did not	elevated	other
ISSUE MONTH	OWNER	AOAO/BOD	OWNER	CAM	CASES	to agreemnt	w/o agreemnt	mediate*	mediate**	to arbitration	***
Dec-24	3	19			22	8	7	3	3	1	
Sep-24	5	11			16	9.5	6				0.5
Jun-24	0	11			11	4	5	1			1
March-24	0	12			12	2	6	2	1	1	
December-23	5	13			18	8	6		1	1	2
September-23	0	8			8	3	4			1	
June-23	4	10			14	4	5	0	2		3
March-23	3	15			18	1	14		2		1
December-22	3	8			11	1	7	0	2		1
September-22	2	4			6	3	1	0	0		2
June-22	5	14			19	5.5	10.5				3
March-22	2	15			17	8	4			1	4
December-21	1	8			9	3	4				2
September-21	3	13			16	8	5				3
June-21	5	12			17	8	5	2			2
March-21	1	9			10	4	3		2		1
December-20	5	15			20	7	12		1		
September-20	2	4			6	2	3				1
June-20	1	2			3	3	0		.		
March-20	3	13			16	5	9		1		1
December-19	2	13		1	16	5	6		2		3
September-19	3	8			11	6	4				1
June-19	0	10			10	5	3		1		1
March-19	2	13			15	7	4	1	1		2
December-18	1	2			3	0	3				
September-18	3	7			10	4	2	1	1		2
June-18	1	4.5	0.5		6	2	3	1			
March-18	5	5	1		11	3	3		2		3
December-17	3	13			16	5	6	3	2		
September-17	1	10			11	3	5	2	1		
June-17	0	6			6	3	3				
March-17	2	4			6	4	2				
December-16	2	6			8	2	4	2			
September-16	2	8			10	2	5	1	2		
June-16	1	3	1		5	3	0	0	1		1
March-16	2	10			12	3	2	1	4		2
December-15	2	7			9	3	2	3	1		
September-15	0	2	1		3	1	1	1			
total cases	85	347.5	3.5	1	437	158	174.5	24	33	5	42.5
total by percent	19.451%	79.519%	0.801%	0.229%	100.000%	36.156%	39.931%	5.492%	7.551%	1.144%	9.725%

*association declined, refused, nonresponsive, or withdrew **owner declined, refused, nonresponsive, or withdrew ***based on interpretation of comments including lack of clarity, incomplete, unable to schedule

Mediation Case Summaries

From September of 2024 through November of 2024, the following condominium mediations or arbitrations were conducted pursuant to Hawai`i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission ("Commission") for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations through the District Courts while mediation providers conducted community outreach in their respective communities.

Mediation exists not only to facilitate conflict resolution, but to also educate the parties involved as to the intricacies of the condominium law, their association's governing documents, and the strengths and weaknesses of their respective arguments. While the Commission strives for every mediation to resolve the conflicts, not every mediation will come to an agreement. That does not necessarily mean mediation has failed, as it also serves to reduce costly litigation.

The Commission subsidizes up to $3,000 for qualified evaluative mediations and up to $600 for facilitative mediations for qualified associations. Should a mediation not come to an agreement once that subsidy money is exhausted, no agreement is noted in Commission records. However, the Commission is aware that parties often come to agreements through continued unsubsidized mediation.

Dispute Prevention and Resolution, Inc.

Owner vs AOUO	Dispute over interpretation of the house rules and retaliation	Mediated to agreement
AOUO vs Owner	Dispute over interpretation of the declaration, bylaws, and house rules regarding tenants	Mediated to agreement
Owner vs AOUO	Dispute over interpretation of the declarations and bylaws over repairs	Mediated to agreement
Owner vs AOUO	Dispute over interpretation of the declarations and bylaws	No agreement
Owner vs AOUO	Dispute over interpretation of the house rules and retaliation	No agreement
Owner vs AOUO	Dispute over interpretation of the bylaws, house rules, and selective enforcement	No agreement, private mediation continues
Owner vs AOUO	Dispute over the governing documents and retaliation	No agreement
Owner vs AOUO	Dispute over the governing documents and related attorney fees	Mediated to agreement
Owner vs AOUO	Dispute over interpretation of the declaration and bylaws in use of parking ramp	Arbitration in favor of the owner
AOUO vs Owner	Dispute over interpretation of the declaration and bylaws over use of common element for EV charging	No agreement
Owner vs AOUO	Dispute over the governing documents and related attorney fees and fines	Mediated to agreement
Owner vs AOUO	Dispute over parking, harassment, and board duties	No agreement
Owner vs AOUO	Dispute over noise, recreational area usage, and fire code violations	No agreement
Owner vs AOUO	Dispute over interpretation of the declarations and bylaws in repairs	Mediated to agreement

cont. page 8

Mediation Case Summaries

Kauai Economic Opportunity

Owner vs AOUO	Dispute over damage	No mediation, AOUO failed to respond
Owner vs AOUO	Dispute over damage	No mediation, AOUO failed to respond
Owner vs AOUO	Dispute over leaks and insurance coverage	No agreement, owner withdrew

Lou Chang

AOUO vs Owner	Dispute over the governing documents regarding access to perform repairs and maintenance	Mediated to agreement

Mediation Center of the Pacific

Owner vs AOUO	Dispute over interpretation of the declarations and bylaws over fines, late fees, and attorney fees	Mediated to agreement
Owner vs AOUO	Dispute over interpretation of the declaration and bylaws over fees for documents	No mediation, requesting owner withdrew
Owner vs AOUO	Dispute over interpretation of the declaration, bylaws, house rules over fees and fines, building management	No mediation, AOUO declined mediation
Owner vs AOUO	Dispute over interpretation of the declaration, bylaws, house rules over fees and fines, meeting participation, and maintenance	No mediation, requesting owner refused contact

To consult with any of our subsidized private mediation services, contact one of the following providers:

Oahu
Mediation Center of the Pacific, Inc.
1301 Young Street, 2nd Floor
Honolulu, HI 96814
Tel: (808) 521-6767
Fax: (808) 538-1454
Email: mcp@mediatehawaii.org

Maui
Mediation Services of Maui, Inc.
95 Mahalani Street, Suite 25
Wailuku, HI 96793
Tel: (808) 244-5744
Fax: (808) 249-0905
Email: info@mauimediation.org

West Hawaii
West Hawaii Mediation Center
65-1291 Kawaihae Road, #103B
Kamuela, HI 96743
Tel: (808) 885-5525 (Kamuela)
Tel: (808) 326-2666 (Kona)
Fax: (808) 887-0525
Email: info@whmediation.org

East Hawaii
Ku'ikahi Mediation Center
101 Aupuni St. Ste. 1014 B-2
Hilo, HI 96720
Tel: (808) 935-7844
Fax: (808) 961-9727
Email: info@hawaiimediation.org

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Fax: (808) 245-7476
Email: keo@keoinc.org

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Dispute Prevention and Resolution
1003 Bishop Street, Suite 1155
Honolulu, HI 96813
Tel: 523-1234
Website: http://www.dprhawaii.com/

September 2024

Mediation Case Summaries

From June of 2024 through August of 2024, the following condominium mediations or arbitrations were conducted pursuant to Hawai`i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations through the District Courts while mediation providers conducted community outreach in their respective communities.

Dispute Prevention and Resolution, Inc.

AOUO vs Owner	Dispute over the interpretation of the declaration, bylaws and house rules	Mediated to an agreement
Owner vs AOUO	Dispute over the maintenance fees and legal fees	Mediated to an agreement
Owner vs AOUO	Dispute over retaliation, interpretation of the bylaws and house rules	Mediated to an agreement
Owner vs AOUO	Dispute over the bylaws and declaration, common elements	No Agreement
Owner vs AOUO	Dispute over the bylaws and declaration, insurance	No Agreement
Owner vs AOUO	Dispute over the bylaws covering flooring	No Agreement
Owner vs AOUO	Dispute over the bylaws and declaration over fines	Mediated to an agreement
AOUO vs Owner	Dispute over the bylaws and declaration over repairs	No Agreement
Owner vs AOUO	Dispute over the bylaws and declaration over repairs	Mediated to an agreement
Owner vs AOUO	Dispute over the bylaws and declaration over repairs and budget	Mediated to an agreement
AOUO vs Owner	Dispute over the bylaws and declaration over improvements	No Agreement
AOUO vs Owner	Dispute over the bylaws and declaration over smoking	Mediated to an agreement
Owner vs AOUO	Dispute over the bylaws and declaration over insurance	No Agreement
AOUO vs Owner	Dispute over the bylaws and declaration over attorney fees	Mediated to an agreement

Lou Chang

Owner vs AOUO	Dispute over House Rules, noise, common area maintenance and harassment	Mediated to an interim agreement, future private mediation
Owner vs AOUO	Dispute over interpretation of the bylaws, declaration, owner participation and common elements	Mediated to an agreement

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Email: info@mauimediation.org

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Tel: (808) 326-2666 (Kona)
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June 2024

Mediation Case Summaries

From March of 2024 through May of 2024, the following condominium mediations or arbitrations were conducted pursuant to Hawai`i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations through the District Courts while mediation providers conducted community outreach in their respective communities.

Dispute Prevention and Resolution, Inc.

Owner vs AOUO	Dispute over the interpretation and violation of bylaws and house rules involving treatment of employees	Mediated, no agreement
Owner vs AOUO	Dispute over the interpretation and violation of declaration and bylaws regarding building repairs and maintenance	Mediated to an agreement
Owner vs AOUO	Dispute over the interpretation and violation of declaration and bylaws regarding disability access, repairs, discrimination, and notice	Mediation, no agreement
Owner vs AOUO	Dispute over the interpretation and violation of bylaws and house rules, alleged retaliation	Mediation, no agreement
Owner vs AOUO	Dispute over special assessment	Mediation in progress
Owner vs AOUO	Dispute over the interpretation and violation of bylaws regarding proxies	Mediation, no agreement
Owner vs AOUO	Dispute over the interpretation and violation of declaration and bylaws regarding common elements, retaliation	Mediation, no agreement
Owner vs AOUO	Dispute over the modification of a unit, retaliation	Mediated to an agreement

Mediation Center of the Pacific

Owner vs AOUO	Dispute over the interpretation and violation of house rules in relation to parking stalls and loading zone	AOUO declined Mediation
Owner vs AOUO	Dispute over the interpretation and violation of bylaws and declaration in relation to renovations and lack of communication	Mediated to an agreement

Big Island Mediation Center

Owner vs AOUO	Dispute over the enforcement of association rules	Mediated to an agreement

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Oahu
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Fax: (808) 538-1454
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March, 2024

Mediation Case Summaries

From December of 2023 through February of 2024, the following condominium mediations or arbitrations were conducted pursuant to Hawai'i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations through the District Courts while mediation providers conducted community outreach in their respective communities.

Dispute Prevention and Resolution, Inc.

Owner vs AOUO	Dispute over the interpretation of governing documents and existing rules	Mediated, no agreement
Owner vs AOUO	Dispute over common elements	Arbitration with an agreement of all parties reached
Owner vs AOUO	Dispute over common elements and repairs	Mediated, no agreement
Owner vs AOUO	Dispute over board resolutions, declaration and bylaws regarding guest fees	Mediated, no agreement
Owner vs AOUO	Dispute over the governing documents and board obligations	Mediated, no agreement
Owner vs AOUO	Dispute over common elements and repairs	Mediated to an agreement
Owner vs AOUO	Dispute over lanai common element expense	Mediated to an agreement
Owner vs AOUO	Dispute over the interpretation of declaration and bylaws regarding water damage	Mediated, no agreement

Mediation Center of the Pacific

Owner vs AOUO	Dispute over the interpretation and violation of the declaration and bylaws	No mediation, AOUO attorney failed to schedule
Owner vs AOUO	Dispute over the interpretation and violation of bylaws and house rule	Mediated, no agreement
Owner vs AOUO	Dispute over the interpretation of house rules related to pets	No mediation, AOUO declined
Owner vs AOUO	Dispute over the interpretation of bylaws related to alternative living arrangements	No mediation, owner failed to schedule

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Fax: (808) 538-1454
Email: mcp@mediatehawaii.org

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Email: info@mauimediation.org

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EXHIBIT C

Lila Mower

August 29, 2024

State of Hawaii
Department of Commerce and Consumer Affairs, Real Estate Branch
335 Merchant Street, Room 333
Honolulu, Hawaii 96813
Attention: Neil K. Fujitani, Supervising Executive Officer

Regarding: **MEDIATION BIAS**

Aloha Mr. Fujitani,

It has been a while since we last spoke and I hope this message finds you well.

After a recent instruction session for mediators produced by a center that provides Condominium Education Trust Fund (CETF) subsidized mediations, a few of those mediators reported--independently of each other--that an instructor spoke disparagingly of condo owners.

I received the first call in June. A participant in that mediation class, an acquaintance, unexpectedly called to assure that, despite what the instructor said, the participant would be fair, having previously heard from condo owners about their concerns.

A second call, also in June, came from another acquaintance whose contact attended a class for mediators and made a similar allusion about the instructor's regard for condo owners.

I did not piece together the significance of those two calls until a third person contacted me this month.

She provided more specificity, additionally alleging that the mediators' class instructor claimed that there was a "fight" about who would be the Chair of the Condominium Property Regime (CPR) Task Force. The instructor she spoke of was elected the Chair, and I was elected as Vice-Chair. However, there was no such dispute and there are publicly available recordings of the CPR Task Force meetings that witness the Task Force's proceedings and refute the instructor's mistruth.

Perhaps the mediators' class was also recorded and may be available for review by your office. Apparently, there were many mediators in that Zoom class which suggests a wide disbursement of misinformation.

Apparently, during this instructional class for mediators, the instructor sought to inculcate a prejudice against condo-owners that should not exist for any just or fair dispute resolution process.

For many years, I have testified to the Legislature that "mediations do not work," and supported that claim with copies of the mediation cases summarized in each quarterly Hawaii Condominium Bulletin. Legislators and their aides have had years, and the CPR Task Force and the DCCA has now had nearly a year, to verify, refute, or otherwise challenge my findings.

Lila Mower

In no event do I want alternative dispute resolution processes to fail. But condo owners have repeatedly alleged that their mediations were not as successful as lawmakers had envisioned and as we condo owners had hoped.

The mediation case summaries in the Hawaii Condominium Bulletins appear to support these condo owners' allegations. (See addenda for copies for the last reported year.)

Tallies of the hundreds of mediation cases reported in the Hawaii Condominium Bulletin reveal that the vast majority of mediation cases were initiated by condo owners against their association (or the associations' boards), and that most mediation cases were **not** successfully "settled to agreement." Since 1991, from when copies of the Hawaii Condominium Bulletins can be found online, only about one in every four reported cases were "settled to agreement." More recently, since 2015 when evaluative mediations were first subsidized by the CETF, only about one of every three reported mediation cases were "settled to agreement."

One of every three or four cases that "settled to agreement" is not assurance of a successful process.

Testimonies that "mediations do not work" have inadvertently upset many people, especially those who participate in mediations as mediators or legal counsel. Rather than denouncing these assertions or the owner-participants of mediation, **the standards of the mediation process should be improved so that greater success can be garnered.**

And that improvement starts with the instruction of mediators who are supposed to be **neutral** parties:

> *"A mediator is a neutral third party that leads a mediation between parties as a form of alternative dispute resolution. A mediator's goal is to encourage collaboration between the parties and guide them to a settlement through the mediation process."* (source, https://www.law.cornell.edu/wex/mediator)

Because the Condominium Education Trust Fund is funded by condo owners' mandatory contributions, the DCCA Real Estate Commission and Real Estate Branch (REC REB) should be aware of these biases that nullify their and lawmakers' claims that the mediation process offers a "neutral" means of dispute resolution.

Additionally, mediators should be aware of how the CETF subsidies are implemented as it may affect the fairness of the process and the success of their mediation.

Although the DCCA REC REB has invoices that detail the transactional aspect of mediation, those in the mediators' class were unsure of how the CETF subsidy works. One mediation center purportedly charges $375 per participating *person* while another mediation center charges $375 per *party*. If this is correct, then that cost differential alone could affect the mediation process and outcome, preventing some owners from pursuing, participating in, and resolving disputes through mediation.

Ideally, because of owners' contributions to CETF, the summaries provided by the mediation centers should report an important element of mediation—its costs--that condo owners have had to expend to

protect their rights, often compelled to equip themselves with legal assistance for some semblance of fairness when opposed by attorneys who represent their associations and, in some cases, their associations' insurers.

The legal fees expended by associations and their insurers, too, should be valuable data to the DCCA REC REB and condo owners, as the legal costs of dispute resolution is a major factor which influence the cost and availability of association and HO6 insurances, a catastrophe that the Governor has now determined is an emergency.

Further, the failure of mediators to disclose their prior relationships or conflicts of interest has created distrust in the mediation process. A participant in the mediator class suggested that attorneys who practiced in condo or association law should **not** serve as mediators as it was this mediator's observation that the condo or association attorneys were "always in favor of the condo [association or board]" and were not mediating based on "the issue at hand." Condo owners who participated in mediation have made similar allegations.

Contrary to what reportedly occurred in that instructional class for mediators, mediation provider centers should emphasize that biases and prejudices have no place in just and fair dispute resolution.

The DCCA REC REB must act to ensure that mediations subsidized by condo owners' mandatory contributions to the Condominium Education Trust Fund are used properly, as intended, and not to harm those very owners. Biases in the mediation process are unacceptable.

Mahalo to your attention to this very disconcerting matter.

Aloha,

/s/

Lila Mower

Cc: Mediation Center of the Pacific
Dispute Prevention and Resolution
Senate Committee on Commerce and Consumer Protection
House Committee on Consumer Protection and Commerce
DCCA, Office of Consumer Protection
DCCA, Regulated Industries Complaints Office
Hawaii State Judiciary
Various condominium owners' and consumer advocacy groups

SB-146-SD-1
Submitted on: 3/11/2025 1:26:52 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Primrose Leong-Nakamoto	Nakamoto Realty, LLC	Oppose	Written Testimony Only

Comments:

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

I STRONGLY OPPOSE S.B. No. 146 SD1 ("SB 146").

SB 146 will significantly impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) depriving associations and owners of their due process rights.

A bill of this magnitude, which will drastically impact the rights of condominium associations and their members, should have been circulated for comment by members of the community association industry before being presented to the Legislature in the form of a bill, but it was not.

This bill should be deferred for that reason alone. It is unconscionable to pass major legislation that will not only substantially impair the rights of associations and their members but also repeal a statutory right that has been in place since 1978 without seeking input from the community association industry.

A. SB 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." Section (e) found on page 11 provides that a party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f), except as reasonably required to preserve a claim or defense (in which case the action will be immediately stayed upon filing). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by requesting early neutral evaluation. It will leave associations without legal recourse while owners engage in covenant violations which may include making unauthorized alterations and additions, causing disturbances, or preventing an association's contractor from accessing their units to repair the common elements.

B. The Bill Eliminates a Statutory Right That Has Existed Since 1978.

For absolutely no good reason, SB 146 will repeal HRS Section 514B-157 which expressly authorizes condominium associations to demand payment of attorneys' fees when enforcing covenants and collecting assessments. The statutory right to demand fees has been in the law since HRS Section 514A-94 took effect on January 1, 1978. The repeal of HRS Section 514B-157 will substantially hinder the ability of associations to collect attorneys' fees from owners who violate the covenants and fail to pay assessments. When those fees cannot be recovered from the defaulting owners or owners who breach the covenants, they are paid by all owners, as a common expense. This is unfair to those owners who abide by the covenants and timely pay their assessments.

C. SB 146 Will Deprive Associations and Owners of Due Process.

SB 146 adds a new Section 514B-A(c) that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court. In this regard, Section 514B-A(c) may be unconstitutional as it deprives parties of their constitutional right to due process. It may also constitute an impairment of contracts because it conflicts with the bylaws of many associations.

D. SB 146 Will Make it Practically Impossible for Associations to Impose Fines.

SB 146 adds a new provision on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. The time it will take to attend hearings in small claims court will prevent staff or volunteers from addressing other critical functions of the associations. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. SB 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are Collectible.

The new Section 514B-B(b) provides that no attorneys' fees with respect to a fine shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable". This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon

appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

SECTION 8 of the bill amends the fine provision found in HRS Section 104(a)(11), but omits a change to HRS Section 104(b) which also relates to fines. This omission will create inconsistencies in the law. If a new fine provision is to be added, HRS Section 514B-104(b) should be deleted to avoid conflict with the new provision.

Furthermore, while SB 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, SB 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

F. Comments on Section 11 of the Bill

The proposed changes to HRS Section 514B-146 found in SECTION 11 of the bill are quite substantial without any stated compelling reason for the changes. If HRS Section 514B-146 is to be amended, the proposed wording should be amended for clarification.

The new Section 514B-146(f) allows a unit owner to request mediation within thirty days of the statement described in subsection (d). The statement referred to in subsection (d) is given only if an owner requests such a statement. The deadline to request mediation should not be tied to a date that is uncertain and may never arise.

The new subsection (f) states that an owner shall be entitled to a refund of any amounts paid that are determined by a neutral evaluator to have not been owed. This makes the neutral evaluator's decision binding without due process of law.

The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE SB 146 and urge your Committee to defer this measure.

Respectfully submitted,

Primrose Leong-Nakamoto

Dear Representative Matayoshi, Chair, Representative Chun, Vice Chair, and Members of the Committee:

I OPPOSE S.B. No. 146 SD1 ("SB 146"), which will impair the operation of associations by: (1) imposing an automatic stay pending "early neutral evaluations" which may substantially delay the resolution of violations and severely impair associations from operating their projects; (2) severely limiting the ability of associations to seek reimbursement of legal fees and costs when owners fail to pay assessments or violate the governing documents, and (3) deprive associations and owners of their due process rights.

It is unconscionable to pass major legislation that will not only substantially impair the rights of associations and their members but also repeal a statutory right that has been in place since 1978 without seeking input from the community association industry.

A. SB 146 Will Delay Resolution of Violations and Impair Associations From Operating Their Projects.

S.B. No. 146 will make it difficult for associations to enforce their governing documents by imposing an automatic stay pending "early neutral evaluations." A party to a dispute that has received a request for early neutral evaluation shall not initiate an action in any court regarding the subject matter of the dispute until ninety-one days after completion of the hearing described in subsection (f). This provision will enable owners to prevent associations from enforcing the covenants against them for long periods of time by requesting early neutral evaluation and will leave associations without legal recourse while owners engage in covenant violations which may include making unauthorized alterations and additions, causing disturbances, or preventing an association's contractor from accessing their units to repair the common elements.

B. The Bill Eliminates a Statutory Right That Has Existed Since 1978.

SB 146 will repeal HRS Section 514B-157 which expressly authorizes condominium associations to demand payment of attorneys' fees when enforcing covenants and collecting assessments. The statutory right to demand fees has been in the law since HRS Section 514A-94 took effect on January 1, 1978. The repeal of HRS Section 514B-157 will substantially hinder the ability of associations to collect attorneys' fees from owners who violate the covenants and fail to pay assessments. When those fees cannot be recovered from the defaulting owners or owners who breach the covenants, they are paid by all owners, as a common expense, which is unfair to those owners who abide by the covenants and timely pay their assessments.

C. SB 146 Will Deprive Associations and Owners of Due Process.

SB 146 adds a new Section 514B-A© that will likely prove harmful to both associations and owners. An association's ability to recover attorneys' fees and costs, and an owner's obligation to reimburse an association for the same, will hinge on the outcome of the evaluator's written evaluation of claims and defenses under §514B-F(g). Depending upon the evaluator's evaluation, an association or owners may be unfairly and permanently deprived of their right to reimbursement of attorneys' fees and costs in connection with a dispute even when the evaluator's evaluation has been overturned by a court. In this regard, Section 514B-A© may be unconstitutional as it deprives parties of their constitutional right to due process. It may also constitute an impairment of contracts because it conflicts with the bylaws of many associations.

D. SB 146 Will Make it Practically Impossible for Associations to Impose Fines.

SB 146 adds a new provision on fines, giving owners a statutory right to appeal fines to the small claims court. For many associations with very limited resources, operating with minimal staff, it will no longer be practical to impose fines. Many associations may find that it is not worth the effort to impose fines. The result may be an increase in violations.

E. SB 146 Will Prevent Associations From Charging Owners for Attorneys' Fees Until Fines Are"DEEMED" Collectible.

This could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. A board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation.

While SB 146 establishes procedures to be followed by associations and time periods for action which may serve a good purpose, SB 146 may conflict with the procedures and time periods for action found in the governing instruments of condominium associations. This will likely create confusion. If this bill is to be adopted, a provision should be added addressing how those conflicts are to be resolved.

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The new subsection (g) provides that the association may proceed to collect an unpaid assessment by any legal means, except where collection efforts are stayed pursuant to subsection (f). It should be made clear that the 60-day stay provided for in subsection (f) shall not apply to the recordation of a lien by an association because it is conceivable that an association will need to record a lien during that time period to preserve the priority of its lien.

For the foregoing reasons, I STRONGLY OPPOSE SB 146 and urge your Committee to defer this measure.

Respectfully submitted,

Pamela J. Schell

SB-146-SD-1
Submitted on: 3/11/2025 1:50:13 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
MATTHEW A. COHEN	Individual	Oppose	Written Testimony Only

Comments:

I opposed SB146

SB-146-SD-1
Submitted on: 3/11/2025 1:52:00 PM
Testimony for CPC on 3/12/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Julie Sparks	Individual	Oppose	Written Testimony Only

Comments:

Committee on Consumer Protection & Commerce

Testimony in Opposition to SB 146

Chair Matayoshi, Vice Chair Chun, and Members of the Committee:

I respectfully submit this testimony in opposition to SB 146. This bill, as drafted, imposes significant financial, administrative, and operational burdens on condominium associations. These burdens will likely undermine an association's ability to enforce rules, collect assessments, and maintain the well-being of the association.

Under this bill, Associations will have difficulty enforcing their governing documents since action is stayed pending early neutral evaluations. This provision leaves associations without recourse and may ultimately serve to increase expenses for all owners due to the actions of one owner. For instance, a unit owner facing a fine or assessment lien might request mediation or early neutral evaluation merely to stall proceedings while violations of the governing documents continue. Such tactics could weaken our authority and increase costs, undermining our ability to maintain community standards.

The bill also changes the current law removing the provision that states reasonable attorneys' fees and costs are payable on demand. This provision is being replaced by one that requires associations to file legal actions in order to collect legal fees. This will have the opposite effect of what was likely intended as it will increase legal fees and costs rather than decrease them.

The provision of the bill that gives owners the right to appeal fines in small claims court is very troubling. The time it will take to attend hearings in small claims court will take time and staff away from other duties. Associations may find that imposing fines is no longer worth the effort of attending each appeal, violations my rise, and the quality of life in the community would be reduced.

While I support efforts to reduce litigation, Senate Bill 146, in its current form, places disproportionate burdens on condominium associations. The increased costs, delays, administrative complexities, and limits to enforcement outweigh the intended benefits of the bill. I urge the committee to defer this bill.

Sincerely,

Julie Sparks, Esq.