SB-253-HD-1
Submitted on: 3/28/2025 10:21:19 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Idor Harris	Honolulu Tower AOAO	Oppose	Written Testimony Only

Comments:

Honolulu Tower is a 396 unit condominium located at the corner of Beretania and Maunakea Streets. The Board of Directors of the Association of Apartment Owners of Honolulu Tower at its February 3, 2025 meeting expressed concerns with SB253.

The Board objects to having the burden of proving it has complied with Section 2, subsection 2. When a plaintiff brings an action, that party has the burden of proof. In some instances, the burden of proof may shift to the defendant, for example, after the plaintiff makes a prima facie showing of certain facts. However, it is inconsistent with general principles of law to allow a plaintiff to file an action without any burden of proof.

There is no justification for shifting the burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation overwhether they complied with Section 514B-148(a).

The specifications are very detailed. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

Idor Harris
Resident Manager

SB-253-HD-1
Submitted on: 3/29/2025 3:24:51 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mike Golojuch, Sr.	Palehua Townhouse Association	Oppose	Written Testimony Only

Comments:

We oppose SB253. Please defer this bill.

HAWAI'I REALTORS®

808-733-7060
808-737-4977
1259 A'ala Street, Suite 300
Honolulu, HI 96817

April 2, 2025

The Honorable David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs
State Capitol, Conference Room 325 & Videoconference

RE: Senate Bill 253, SD2, HD1, Relating to Condominium Reserves

HEARING: Wednesday, April 2, 2025, at 2:00 p.m.

Aloha Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 10,000 members. HAR **supports** Senate Bill 253, SD2, HD1, which requires a detailed budget summary to contain all required information without referring the reader to other portions of the budget or reserve study. Excludes the good faith defense for associations whose boards adopt a budget that omits the required detailed budget summary. Clarifies a unit owner's standing and the association's burden of proving substantial compliance. Effective 7/1/3000.

In 2023, the Legislature passed, and Act 199 was signed into law, requiring a budget summary with additional details to be prepared on the financial condition of an association. Adding further clarifications to this law requiring budget summaries to contain all required information enhances transparency and provides both owners and prospective purchasers with valuable insights into the association's financial health.

Mahalo for the opportunity to provide testimony on this measure.

HAWAII LEGISLATIVE
ACTION COMMITTEE
community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

March 30, 2025

Honorable David A. Tarnas
Honorable Mahina Poepoe
Committee on Judiciary & Hawaiian Affairs
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **SB 253 SD2 HD1 SUPPORT**

Dear Chair Tarnas, Vice Chair Poepoe and Committee Members:

CAI supports SB 253 SD2 HD1. SB 253 SD2 HD1 will protect consumers by excluding the defense of good faith for an association if its board adopts a budget that omits the required detailed budget summary. SB 253 SD2 HD1 also clarifies standing requirements and the burden of proving substantial compliance.

Financial transparency is fundamental. The requirement of a budget summary is an important tool to enable owners to easily understand the financial condition of the Association.

The items to be included in the summary are expressed in Hawaii Revised Statutes ("HRS") §514B-148(a)(1-8). Those items must be determined through the budgeting process, so the burden of including a substantially compliant summary is light.

This is particularly so since most of those items reference objective matters (*e.g.*, disclose "cash or accrual" budgeting) and the estimated amounts to be included are to be derived from the work of experts. Association directors are entitled to reasonably rely upon experts. HRS §514B-106 provides, in relevant part, that:

> In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.

The general standards for directors are detailed in HRS §414D-149. That section provides, in relevant part, that:

> (b) In discharging the director's duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: ***

> (2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence[.][1]

SB 253 SD2 HD1 provides, in relevant part, that: "In any action to enforce compliance, a board shall have the burden of proving it has substantially complied with this section." This is in accord with an association's existing burden under current law. HRS §514B-148(g) presently provides, in relevant part, that:

> In any proceeding to enforce compliance, a board that has not prepared an annual operating budget and reserve study shall have the burden of proving it has complied with this section.

SB 253 SD2 HD1 will enforce budget discipline in a manner that remains consistent with self-governance. Please pass SB 253 SD2 HD1.

CAI Legislative Action Committee, by

Its Chair

---

[1] **§414D-149 General standards for directors.** (a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee:
(1) In good faith;
(2) In a manner that is consistent with the director's duty of loyalty to the corporation;
(3) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
(4) In a manner the director reasonably believes to be in the best interests of the corporation.
(b) In discharging the director's duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
(3) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.
(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.
(d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.
(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.
(f) Any person who serves as a director to the corporation without remuneration or expectation of remuneration shall not be liable for damage, injury, or loss caused by or resulting from the person's performance of, or failure to perform duties of, the position to which the person was elected or appointed, unless the person was grossly negligent in the performance of, or failure to perform, such duties. For purposes of this section, remuneration does not include payment of reasonable expenses and indemnification or insurance for actions as a director as allowed by sections 414D-159 to 414D-167.

SB-253-HD-1
Submitted on: 3/30/2025 12:56:43 PM
Testimony for JHA on 4/2/2025 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 Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure (amending subsection (d)) which provides: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with the comprehensive list of requirements for the summary as set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

Similar language was contained in H.B. 70. The Senate Committee on Commerce and Consumer Protection heard testimony and removed the language from that bill. See H.B.70 H.D.1, S.D.1. I urge this Committee to do the same with respect to S.B. 253. If that is not possible, then at the very least, please consider revising this language to read: "provided that this subsection shall not apply to an association if its board adopts a budget that completely omits the summary required by subsection (a)."

Second, I oppose the proposed second sentence in SECTION 2, subsection 3 of the measure (amending subsection (g)) which provides: "Any unit owner whose association board fails to substantially comply with this section shall have standing to bring an action to enforce compliance by the board. In any action to enforce compliance, a board shall have the burden of proving it has substantially complied with this section." The latter sentence should be deleted. When a plaintiff brings an action, that party has the burden of proof. In some instances, the burden of proof may shift to the defendant, for example, after the plaintiff makes a prima facie showing of certain facts. However, it is inconsistent with general principles of law to allow a plaintiff to file an action without any burden of proof. There is no justification for shifting the

burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,

Mark McKellar

SB-253-HD-1
Submitted on: 3/30/2025 2:12:48 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Hawaii First Realty	Support	Written Testimony Only

Comments:

This Bill puts attention to mandatory reserve funding disclosures as currently required by HRS514B. It adds nothing new. Too many associations fail to disclose the true status of their budget and reserve funbd to the detriment of owners and buyers. It will cause boards to properly disclose their budget and reserve fund. I further support the testimony of CAI.

SB-253-HD-1
Submitted on: 3/28/2025 10:07:30 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

I am an owner occupant and board member of a Honolulu condominium. I am also a member of CAI. In reading testimony from a prior committee, I learned that CAI supports this bill. They never informed me or consulted me. I disagree with their position, oppose the bill, and ask that you defer it.
As you are well aware, there are litigious condo owners. They are attracted by gray areas. For example, Section 2, subsection 1 of the measure (amending subsection (d)): "The defense of good faith shall be unavailable to an association whenever its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with all of the requirements.
This bill is also inconsistent with the general principles of law, in that it allows a plaintiff to file an action without any burden of proof. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they complied with Section 514B-148(a).
Hopefully you are aware that when associations are sued, their insurance carriers raise premiums, or worse, no longer offer coverage. The language of this bill is playing into the hands of those companies, especially at a time when premiums are rising and legislators are seeking ways to stop this flow of money.
We already have a self appointed "king" wearing a crown rampaging through the federal government. Hawaii should not follow his example by contravening general principles of law. Please defer this bill.

SB-253-HD-1
Submitted on: 3/29/2025 3:08:35 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure (amending subsection (d)) which provides: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with the comprehensive list of requirements for the summary as set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

Similar language was contained in H.B. 70. The Senate Committee on Commerce and Consumer Protection heard testimony and removed the language from that bill. See H.B.70 H.D.1, S.D.1. I urge this Committee to do the same with respect to S.B. 253. If that is not possible, then at the very least, please consider revising this language to read: "provided that this subsection shall not apply to an association if its board adopts a budget that completely omits the summary required by subsection (a)."

Second, I oppose the proposed second sentence in SECTION 2, subsection 3 of the measure (amending subsection (g)) which provides: "Any unit owner whose association board fails to substantially comply with this section shall have standing to bring an action to enforce compliance by the board. In any action to enforce compliance, a board shall have the burden of proving it has substantially complied with this section." The latter sentence should be deleted. When a plaintiff brings an action, that party has the burden of proof. In some instances, the burden of proof may shift to the defendant, for example, after the plaintiff makes a prima facie showing of certain facts. However, it is inconsistent with general principles of law to allow a plaintiff to file an action without any burden of proof. There is no justification for shifting the

burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,

Anne Anderson

SB-253-HD-1
Submitted on: 3/29/2025 3:14:12 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I very much oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure (amending subsection (d)) which provides: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with the comprehensive list of requirements for the summary as set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

Similar language was contained in H.B. 70. The Senate Committee on Commerce and Consumer Protection heard testimony and removed the language from that bill. See H.B.70 H.D.1, S.D.1. I urge this Committee to do the same with respect to S.B. 253. If that is not possible, then at the very least, please consider revising this language to read: "provided that this subsection shall not apply to an association if its board adopts a budget that completely omits the summary required by subsection (a)."

Second, I oppose the proposed second sentence in SECTION 2, subsection 3 of the measure (amending subsection (g)) which provides: "Any unit owner whose association board fails to substantially comply with this section shall have standing to bring an action to enforce compliance by the board. In any action to enforce compliance, a board shall have the burden of proving it has substantially complied with this section." The latter sentence should be deleted. When a plaintiff brings an action, that party has the burden of proof. In some instances, the burden of proof may shift to the defendant, for example, after the plaintiff makes a prima facie showing of certain facts. However, it is inconsistent with general principles of law to allow a plaintiff to file an action without any burden of proof.

There is no justification for shifting the burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,

Mary Freeman

Ewa Beach

SB-253-HD-1
Submitted on: 3/29/2025 3:17:40 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure (amending subsection (d)) which provides: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with the comprehensive list of requirements for the summary as set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

Similar language was contained in H.B. 70. The Senate Committee on Commerce and Consumer Protection heard testimony and removed the language from that bill. See H.B.70 H.D.1, S.D.1. I urge this Committee to do the same with respect to S.B. 253. If that is not possible, then at the very least, please consider revising this language to read: "provided that this subsection shall not apply to an association if its board adopts a budget that completely omits the summary required by subsection (a)."

Second, I oppose the proposed second sentence in SECTION 2, subsection 3 of the measure (amending subsection (g)) which provides: "Any unit owner whose association board fails to substantially comply with this section shall have standing to bring an action to enforce compliance by the board. In any action to enforce compliance, a board shall have the burden of proving it has substantially complied with this section." The latter sentence should be deleted. When a plaintiff brings an action, that party has the burden of proof. In some instances, the burden of proof may shift to the defendant, for example, after the plaintiff makes a prima facie showing of certain facts. However, it is inconsistent with general principles of law to allow a plaintiff to file an action without any burden of proof. There is no justification for shifting the

burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,
jmt

SB-253-HD-1
Submitted on: 3/29/2025 3:21:41 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure (amending subsection (d)) which provides: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with the comprehensive list of requirements for the summary as set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

Similar language was contained in H.B. 70. The Senate Committee on Commerce and Consumer Protection heard testimony and removed the language from that bill. See H.B.70 H.D.1, S.D.1. I urge this Committee to do the same with respect to S.B. 253. If that is not possible, then at the very least, please consider revising this language to read: "provided that this subsection shall not apply to an association if its board adopts a budget that completely omits the summary required by subsection (a)."

Second, I oppose the proposed second sentence in SECTION 2, subsection 3 of the measure (amending subsection (g)) which provides: "Any unit owner whose association board fails to substantially comply with this section shall have standing to bring an action to enforce compliance by the board. In any action to enforce compliance, a board shall have the burden of proving it has substantially complied with this section." The latter sentence should be deleted. When a plaintiff brings an action, that party has the burden of proof. In some instances, the burden of proof may shift to the defendant, for example, after the plaintiff makes a prima facie showing of certain facts. However, it is inconsistent with general principles of law to allow a plaintiff to file an action without any burden of proof. There is no justification for shifting the

burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,

MichaelnTarggart

SB-253-HD-1
Submitted on: 3/29/2025 4:53:37 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure (amending subsection (d)) which provides: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with the comprehensive list of requirements for the summary as set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

Similar language was contained in H.B. 70. The Senate Committee on Commerce and Consumer Protection heard testimony and removed the language from that bill. See H.B.70 H.D.1, S.D.1. I urge this Committee to do the same with respect to S.B. 253. If that is not possible, then at the very least, please consider revising this language to read: "provided that this subsection shall not apply to an association if its board adopts a budget that completely omits the summary required by subsection (a)."

Second, I oppose the proposed second sentence in SECTION 2, subsection 3 of the measure (amending subsection (g)) which provides: "Any unit owner whose association board fails to substantially comply with this section shall have standing to bring an action to enforce compliance by the board. In any action to enforce compliance, a board shall have the burden of proving it has substantially complied with this section." The latter sentence should be deleted. When a plaintiff brings an action, that party has the burden of proof. In some instances, the burden of proof may shift to the defendant, for example, after the plaintiff makes a prima facie showing of certain facts. However, it is inconsistent with general principles of law to allow a plaintiff to file an action without any burden of proof. There is no justification for shifting the

burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,

John Toalson

SB-253-HD-1
Submitted on: 3/30/2025 2:12:37 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lourdes Scheibert	Individual	Support	Written Testimony Only

Comments:

Deferring maintenance for years has caused excessive increase in maintenance fees and million dollar loans. Kicking the can down the road to the next generation of owners. Stop it.

Dear Representative Tarnas, Chair, Representative Poepoe, Vice Chair, and Members of the Committee:

I OPPOSE S.B. No. 146 SD1, HD1 ("SB 146") in its current form for the reasons discussed below. If a new fine provision is to be adopted, then further amendments are needed.

SECTION 8 of the bill deletes language regarding fines found in HRS Section 514B-104(a)(11), which was necessary to avoid conflict with the new Section 514B-B found on pages 2-4 of the bill. However, the bill fails to also delete HRS Section 514B-104(b)(2) which provides for a different procedure for the imposition of fines against tenants. The procedure in Section 514B-B provides for the imposition of a fine, followed by a right to an appeal while the procedure in HRS Section 514B-104(b)(2) provides for a hearing prior to the imposition of the fine. If SB 146 is to be adopted, HRS Section 514B-104(b)(2) should be deleted. Otherwise, there will be two conflicting procedures for fines against tenants which will undoubtedly create confusion and conflict.

SECTION 11 of the bill amends HRS Section 514B-146 by deleting the existing subsection (f) and replacing it with a new subsection (f) which states on page 31, line 20 and page 32, lines 1-2 that "[a] timely demand for evaluative mediation shall stay an association's effort to collect the contested assessment for sixty days." This is followed by a new subsection (g) (found on page 32, lines 3-6) which provides, in part, that an "association may proceed to collect an unpaid assessment by any legal means except when collection efforts are stayed pursuant to subsection (f)." There may be times that a lien must be recorded to preserve the priority of the Association's lien, but an association will be barred from doing so because of the stay. To address this issue, please consider amending subsection (g) found on page 32 to read:

"(g) An association may defend an assessment in court and in evaluative mediation. The association may proceed to collect an unpaid assessment by any legal means except when collection efforts are stayed pursuant to subsection (f), provided, however, that nothing herein shall preclude an association from recording a notice of lien while a stay pursuant subsection (f) is in effect."

Page 10, line 3. There is a typo on this line that should be corrected. The word five is spelled "mfive."

The new Section 514B-B(b) found on page 4 of the bill 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 is somewhat ambiguous and 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. To make it clear that the attorneys' fees referenced are attorneys' fees incurred in connection with the imposition of a fine, it is suggested that line 9-11 on page 4 of the bill be revised to read:

"(b) No attorneys' fees incurred in connection with the imposition or collection of a fine shall be charged by an association to any unit owner or tenant before the time when a fine is deemed to be collectable."

The new subsection (c) found on page 4 of the bill provides that the imposition of a fine, and the determination of a small claims court, if any, shall be without prejudice to the exercise of any other remedy available to an association. To make it clear that the small claims court decision, which is mandatory and affords no right to appeal, shall not be deemed to constitute res judicata or collateral estoppel as to any issue other than the determination of whether a fine is valid and collectible, please consider adding the following sentence to the new subsection (c) found on page 4, lines 12-14:

The determination of a small claims court regarding the validity or amount of a fine pursuant to this section shall be binding on the parties but shall not constitute res judicata or collateral estoppel as to any issue, factual finding, or determination regarding the underlying violation, bases for the fine, or other issue.

Finally, 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.

Respectfully submitted,

Reyna Murakami, AOUO Director
Mariner's Village 1 & Waialae Place

TESTIMONY IN SUPPORT OF SB253 SD2 HD1

For: The Committee on Judiciary & Hawaiian Affairs

DATE: Wednesday, April 2, 2025
TIME: 2:00 p.m.
PLACE: VIA VIDEOCONFERENCE
Conference Room 325
State Capitol
415 South Beretania Street

Aloha Chair Tarnas, Vice Chair Poepoe, and Members of the Committee,

My name is Gregory Misakian and I have been advocating for the rights of condominium owners in Hawaii since 2021, when I realized how much misconduct and corruption there is within many condominium associations throughout Hawaii, in addition to misconduct and corruption within numerous large management companies that manage and oversee condominium associations.

I currently serve as the 1st Vice President of the Kokua Council and was President for most of 2024. The Kokua Council advocates for our kupuna and lesser advantaged. I also serve on the Waikiki Neighborhood Board, where we have advocated for better consumer protection laws for condominium owners in a resolution adopted in 2023 (also adopted by other Neighborhood Boards).

As many as 1/3 of the population of Hawaii lives in condominiums, including many legislators and their friends and families. It has been shown with evidence to support, including many news stories and a great deal of testimony, that condominium owners are being subjected to abusive and predatory practices, often at the direction of the condominium association's President and Board, with management company agents and association attorneys being willful participants.

While I support SB253 SD2 HD1 and its intentions, owners still have the burden to go to court for enforcement, which can be very costly. The only real solution to

address serious issues within condominium associations and their proper management, is to have enforcement of the laws that you enact.

I ask that you please read and support **HB890** and **SB1265** (companion bill) for an **Ombudsman's Office for Condominium Associations**.

HB890 - RELATING TO CONDOMINIUM ASSOCIATIONS. (Ombudsman)
SB1265 - RELATING TO CONDOMINIUM ASSOCIATIONS. (Ombudsman)

And also:

HB1209 - RELATING TO CONDOMINIUM ASSOCIATIONS (Attorneys' Fees)
HB1311 - RELATING TO CONDOMINIUM PROXY VOTING
HB1312 - RELATING TO ASSOCIATION MANAGERS
HB1313 - RELATING TO BOARD MEMBERS
HB1315 - RELATING TO PARLIAMENTARIANS
HB1447 - RELATING TO MANAGING AGENTS
SB1623 - RELATING TO MANAGING AGENTS

Sadly, as often is the case at the legislature where some work for campaign donations before they work for the people of Hawaii, none of these bills were scheduled for hearings. It is not too late to take what is in these bills and amend some of the bills the Committee Chairs chose, which mostly do not provide the best solutions or enforceable solutions without condominium owners having to go to court. The #1 goal is to help condominium owners so they do not have to go to court, and have a place to go where they are treated fairly, and where efficient and timely resolutions to issues and concerns can be administered (**i.e., the Ombudsman's Office for Condominium Associations)**.

What is clear when you read testimony submitted, is that many in opposition come out of the woodwork when they see a good bill for condominium owners. The phrase is an old one, but I think most of you know it. These people are mostly attorneys who often sue condominium owners, and are the last people that you should ever listen to when making important decisions on bills meant to help condominium owners.

Others claim to be an “expert” with what they tell you and are seen at the top of the testimony list getting top billing, yet there is never full disclosure regarding what they tell you, including that Mr. Richard Emery is on the Real Estate Commission and also works for Associa Hawaii, a management company who has been in the news for being unlicensed for over three months in 2023, and has many complaints filed against it at the DCCA/RICO. And prior to being renamed Associa Hawaii (its DBA name, as it is registered as Certified Management Inc.), the company was “Certified Hawaii” and was previously owned by Mr. Emery. Also in the news in 2014 was a story about the CEO of Certified Hawaii embezzling money and getting jail time.

And just so you know how bad things are - at my condominium association, where I served as the Treasurer and had uncovered serious misconduct and malfeasance and was requesting a forensic audit, I was unable to get the rogue Board to form a Budget Committee and complete the budget. They deferred this for months, and then formed their own committee without me, secretly creating a budget that was late, inaccurate, and did not provide for numerous things that should have been budgeted for. Due to it being so late, the maintenance fee increase could not be applied for two months into the year, ultimately reducing the budgeted amount to be collected. My request for a forensic audit was also ignored, and the 2023 Annual Financial Audit Report was in violation of State law HRS 514B-150, for not being presented to the owners within a specified time period. I also recently found out that our CPA/Auditor is the same one that was previously used at the Makaha Surfside, where there was a confirmed embezzlement of over $330,000.

The people of Hawaii are counting on you to help them, and I respectfully ask all on the committee and all legislators to please pass SB253 SD2 HD1, and in 2026, to please support the other bills listed, including the most important ones related to an Ombudsman’s Office for Condominium Associations.

Mahalo,

Gregory Misakian

SB-253-HD-1
Submitted on: 3/31/2025 12:39:19 AM
Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Primrose Leong-Nakamoto	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure (amending subsection (d)) which provides: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with the comprehensive list of requirements for the summary as set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

Similar language was contained in H.B. 70. The Senate Committee on Commerce and Consumer Protection heard testimony and removed the language from that bill. See H.B.70 H.D.1, S.D.1. I urge this Committee to do the same with respect to S.B. 253. If that is not possible, then at the very least, please consider revising this language to read: "provided that this subsection shall not apply to an association if its board adopts a budget that completely omits the summary required by subsection (a)."

Second, I oppose the proposed second sentence in SECTION 2, subsection 3 of the measure (amending subsection (g)) which provides: "Any unit owner whose association board fails to substantially comply with this section shall have standing to bring an action to enforce compliance by the board. In any action to enforce compliance, a board shall have the burden of proving it has substantially complied with this section." The latter sentence should be deleted. When a plaintiff brings an action, that party has the burden of proof. In some instances, the burden of proof may shift to the defendant, for example, after the plaintiff makes a prima facie showing of certain facts. However, it is inconsistent with general principles of law to allow a plaintiff to file an action without any burden of proof. There is no justification for shifting the

burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,

Primrose Leong-Nakamoto

SB-253-HD-1
Submitted on: 3/31/2025 8:01:28 AM
Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure (amending subsection (d)) which provides: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with the comprehensive list of requirements for the summary as set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

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burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,
Lance Fujisaki

SB-253-HD-1
Submitted on: 3/31/2025 9:00:00 AM
Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure (amending subsection (d)) which provides: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with the comprehensive list of requirements for the summary as set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

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burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,

Laura Bearden

SB-253-HD-1
Submitted on: 3/31/2025 2:07:39 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure (amending subsection (d)) which provides: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with the comprehensive list of requirements for the summary as set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

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burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,

Julie Wassel

SB-253-HD-1
Submitted on: 3/31/2025 4:35:39 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure (amending subsection (d)) which provides: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)." This sentence may cause disputes and litigation in the event that an association includes a summary with a budget as specified in HRS Section 514B-148(a), but an owner contends that the summary does not strictly comply with the comprehensive list of requirements for the summary as set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. For example, Section 514B-148(a)(6)(B) requires the disclosure of any component of association property omitted from the reserve study and the basis for the omission. If a component is inadvertently omitted from the summary and the omission is not disclosed, an owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

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Respectfully submitted,

Carol Walker

SB-253-HD-1
Submitted on: 3/31/2025 8:34:33 PM
Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jeff Sadino	Individual	Support	Written Testimony Only

Comments:

Every year my budget packet contains different information. This has occured with both Hawaiiana and Associa. It makes it very difficult to compare budgets from year to year and to understand what is going on. This Bill will help to have better informed condo Owners, which is a benefit to everyone.

House of Representatives
The Thirty-Second Legislature
Committee on Judiciary & Hawaiian Affairs
Wednesday, April 2, 2025
2:00 p.m.

To: Representative David A. Tarnas, Chair
Re: SB 253 SD2 HD1, Relating to Condominiums

Aloha Chair David Tarnas, Vice-Chair Mahina Poepoe, and Members of the Committee,

Mahalo for the opportunity to testify in support of SB 253 SD2 HD1.

The Hawaii Appleseed Center for Law and Economic Justice reported,

> "Despite working hard and actively supporting our local economy, more than half of Hawai'i's households are living paycheck to paycheck, and are one financial hardship away from slipping into poverty."[1]

The Association of Credit and Collection (ACA International)[2] reported even more dire statistics based on research by PYMNTS.com:

> "Sixty-five percent of consumers currently live paycheck-to-paycheck."

The Hawaii Appleseed Center for Law and Economic Justice 2023 study, "The High Cost of Low Wages," elaborated:

> "Since low-income households spend a higher portion of their budget on basic necessities compared to high-income households, cost increases can push them even deeper into economic insecurity. One survey found that 54 percent of Hawai'i residents spend all of their income on necessities, leaving them with little savings for unexpected costs, such as emergency room bills or vehicle repairs."[3]

NASDAQ[4] claims that the average social security income in Hawaii in 2024 was $1854. Compare this amount to the average cost of housing for a 554 square feet one bedroom condo in Hawaii, $2913, as calculated by Apartments.com.[5]

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[1] https://hiappleseed.org/press-releases/hawaii-low-wages-cost-of-living-strain-society-local-economy
[2] https://www.acainternational.org/news/2024-paycheck-to-paycheck-report-reveals-continuing-economic-pressures
[3] https://static1.squarespace.com/static/601374ae84e51e430a1829d8/t/657a1a50e1c9500c0e09c314/1702500952437/The+High+Cost+of+Low+Wages_FINAL.pdf
[4] https://www.nasdaq.com/articles/heres-average-social-security-benefit-retirees-all-50-states
[5] https://www.apartments.com/rent-market-trends/honolulu-hi/

A Hawaii couple, both receiving the average social security income, would have less than $800 gross left per month to cover other essentials such as food and health care after paying for that average one-bedroom condo.

Many condo owners and tenants have little discretionary income to spare. Some, including kupuna in their 70s and 80s, have taken on additional work to generate income to keep up with their increased living expenses.

Because of Hawaii's high cost of housing, condominium ownership is the only choice available to most of Hawaii's residents intent on pursuing the American Dream of home ownership. And condominium residency, less costly than renting a single-family dwelling, is the only choice available to many of Hawaii's tenants.

Legislators can ensure that Hawaii's residents have opportunities to keep themselves financially safe. By providing enforcement provisions, SB 253 SD2 HD1 helps to ensure notification to owners of their budgetary and reserve obligations. With proper notification, owners may be able to prevent delinquency and its appalling consequences. And potential buyers with access to these financial documents may be alerted and better prepared for future possible financial obligations.

Mahalo for the opportunity to testify.

SB-253-HD-1
Submitted on: 4/1/2025 9:02:33 AM
Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Aloha e Honorable Committee Chairs and Members,

Please pass this critical bill. Abuse and dereliction of duty is rampant in the AOAO world.

Furthermore, there is **no** meaningful oversight by state, country or federal agencies.

Homeowners urgently require your help.

Thank you for the opportunity to submit testimony in **strong support** of this crucial bill.

Very Respectfully submitted,

Miri Yi

Homeowner

Honolulu 96818

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

First, I oppose the proposed clause in SECTION 2, subsection 2 of the measure which states: "provided that this subsection shall not apply to an association if its board adopts a budget that omits the summary required by subsection (a)."

An association may include a summary with a budget as specified in HRS Section 514B-148(a), but inadvertently omit a requirement set forth in the comprehensive list set forth in the statute. Given the level of detail in the specifications contained in Section 514B-148(a), an Association can easily inadvertently omit information from the summary, or information in the summary may turn out to be inaccurate or incomplete. If a component is inadvertently omitted from the summary, it is highly un likely that the omitted requirement would be known and disclosed. An owner could argue that the association breached its duty to submit a summary meeting the requirements of Section 514B-148(a).

Also, I oppose the proposed second sentence in SECTION 2, subsection 3 of the measure amending subsection (g)) which provides: "Any unit owner whose association board fails to substantially comply with this section shall have standing to bring an action to enforce compliance by the board. In any action to enforce compliance, a board shall have the burden of proving it has substantially complied with this section." The last sentence should be deleted. When a plaintiff brings an action, that party has the burden of proof. It is inconsistent with general principles of law to allow a plaintiff to file an action without any burden of proof. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,

Pamela J. Schell

SB-253-HD-1
Submitted on: 4/1/2025 11:31:33 AM
Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Paul A. Ireland Koftinow	Individual	Oppose	Written Testimony Only

Comments:

Dear Representative Tarnas, Representative Poepoe, Vice Chair, and Members of the Committee:

I oppose S.B. No 253, S.D.2., H.D.1.

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burden of proof to an association. If an owner brings an action, the owner should be required to prove that the association failed to meet the requirements of Section 514B-148(a). The statute may expose associations to costly frivolous litigation over whether they substantially complied with Section 514B-148(a).

Respectfully submitted,

Paul A. Ireland Koftinow