

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

P.O. Box 976
Honolulu, Hawaii 96808

February 22, 2025

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Committee on Judiciary
415 South Beretania Street
Honolulu, HI 96813

SB 253 Support with Amendment

Dear Committee,

My name is Richard Emery, and I am a thirty-year condominium industry veteran. I am testifying on behalf of CAI. I also am a CAI Reserve Specialist (RS), reviewed or performed hundreds of Hawaii condominium reserve studies, participated in CAI's national task force for reserve study public policy, and currently serve as an expert in numerous disputes or litigation related to condominium budget and reserve studies.

Let's remember that the national definition is of a reserve study - A budgeting tool not based on any professional review. It is simply a planning document to give an association the best chance to accumulate reserve funds as building components come due and need repair or replacement. The underlying data can change every year as components age and new information becomes available.

CAI would be the first to admit that it has seen poor work product by some associations recognizing on the other hand many associations do a stellar job. That being said, a properly prepared reserve study is invaluable to an association. A reserve study can be hundreds of pages in length so that the untrained eye will not understand its implications.

As the condominium industry is broad it becomes difficult to set a mandatory standard. In 2023 the legislature passed Act 199 that was signed into law, mandating a budget summary that brings to the forefront the true status of the condominium's reserves. It is my belief that the industry itself will be forced to correct itself

Senator Karl Rhoads, Chair
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if the information is clearly disclosed. Unfortunately, some associations look for an easy way to comply and use the summary to vaguely refer back to the original document. Disclosure is important.

The best solution is to mandate boards and managing agents to comply with the intent of Act 199 by taking away their good faith protection if they do not comply by providing an accurate disclosure in the summary itself. Further the proposed Bill needs to be amended to clarify that referral to another source document is not permitted.

CAI proposed to add a sentence after HRS 514B (a) (8) as follows:

"The summary shall contain all required information, without referring reader to other portions of the budget or reserve study."

CAI supports SB 253 with this amendment.

Richard Emery, RS-8
Principal Broker
On Behalf of CAI

SB-253-SD-1

Submitted on: 2/22/2025 4:43:45 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Honolulu Tower is a 396 unit condominium located at the corner of Beretania and MaunakeaStreets. 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 over whether 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-SD-1

Submitted on: 2/23/2025 7:56:54 AM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

We oppose SB253. Please defer this bill

Mike Golojuch, Sr., President

SB-253-SD-1

Submitted on: 2/23/2025 10:12:17 AM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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

complied with this section.” The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Mark McKellar

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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 complied with this section.” The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Reyna Murakami
AOUO President
Mariner’s Village 1

SB-253-SD-1

Submitted on: 2/25/2025 2:41:54 AM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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 complied with this section.” The second sentence which shifts the burden of proof on the association 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 an

owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Primrose Leong-Nakamoto

SB-253-SD-1

Submitted on: 2/22/2025 4:42:55 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

I am the owner occupant and board member of a high rise condominium in Honolulu. I am also a member of CAI. Until I read the testimony from the last hearing, I was unaware that CAI had taken a position on this bill, a position I oppose and ask you to defer this bill.

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).

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.

SB-253-SD-1

Submitted on: 2/22/2025 6:27:45 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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 complied with this section.” The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Anne Anderson

SB-253-SD-1

Submitted on: 2/22/2025 7:03:39 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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 complied with this section.” The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Joe Taylor

SB-253-SD-1

Submitted on: 2/22/2025 8:51:42 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

TESTIMONY:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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 complied with this section.” The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Michael Targgart

SB-253-SD-1

Submitted on: 2/22/2025 9:17:29 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I STRONGLY OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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).”

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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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Mary Freeman

Ewa Beach

SB-253-SD-1

Submitted on: 2/22/2025 10:58:55 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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).”

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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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

John Toalson

SB-253-SD-1

Submitted on: 2/23/2025 8:32:41 AM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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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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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Carol Walker

LAW OFFICES OF PHILIP S. NERNEY, LLLC

A LIMITED LIABILITY LAW COMPANY
335 MERCHANT STREET, #1534, HONOLULU, HAWAII 96806
PHONE: 808 537-1777

February 23, 2025

Honorable Karl Rhoads
Honorable Mike Gabbard
Committee on Judiciary
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **SB 253 SD1 SUPPORT**

Dear Chair Rhoads, Vice Chair Gabbard and Committee Members:

Like CAI, I support SB 253 SD1. That said, the Committee is respectfully requested to consider two amendments.

First, the Committee is respectfully requested to consider an amendment to Hawaii Revised Statutes §514B-148(a). The amendment would be the addition of a sentence after §514B-148(a)(8), to read:

The summary shall contain all required information, without referring the reader to other portions of the budget.

Second, the Committee is requested to consider an amendment to Section 2 of SB 253 SD1. The following sentence would better serve:

The association shall have the burden of proving substantial compliance with this section in any such action.

Rather than:

In any [~~proceeding~~] action 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." ¹

This is so for two reasons. First, the Association is the entity subject to suit. More importantly, though, associations should not be vulnerable to quibbling arguments about insubstantial performance deviations. Substantial compliance should be the standard.

¹ SB 253 SD1 presently reads, in relevant part, as follows:

SECTION 2. Section 514B-148, Hawaii Revised Statutes, is amended as follows:

2. By amending subsection (g) to read:

"(g) [~~Subject to the procedures of section 514B-157 and any rules adopted by the commission, any~~] Any unit owner whose association board fails to comply with this section [may] shall have standing to bring an action to enforce compliance by the board. In any [~~proceeding~~] action 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."

Honorable Karl Rhoads
Honorable Mike Gabbard
February 23, 2025
Page 2 of 2

Thus, I support SB 253 SD1, particularly with amendments.

Very truly yours,

A handwritten signature in black ink that reads "Philip S. Nerney". The signature is written in a cursive style with a large, prominent "P" and "N".

Philip S. Nerney

SB-253-SD-1

Submitted on: 2/23/2025 1:49:58 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a "good faith" defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that "[a]ny unit owner whose association board fails to 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 complied with this section." The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,
Lance Fujisaki

SB-253-SD-1

Submitted on: 2/24/2025 8:11:20 AM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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 complied with this section.” The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Julie Wassel

SB-253-SD-1

Submitted on: 2/24/2025 8:12:30 AM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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 complied with this section.” The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Paul A. Ireland Koftinow

SB-253-SD-1

Submitted on: 2/24/2025 9:53:10 AM

Testimony for JDC on 2/26/2025 9:40:00 AM

Submitted By	Organization	Testifier Position	Testify
Rachel Glanstein	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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 complied with this section.” The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

It's already difficult enough to get owners to serve on the board. AOA Lakeview Sands hasn't had a full board of 5 owners in a long time. We usually have to function with only 3 or 4 of the seats filled. We need to encourage owners to serve not scare them from trying.

Mahalo,

Rachel Glanstein

SB-253-SD-1

Submitted on: 2/24/2025 10:34:38 AM

Testimony for JDC on 2/26/2025 9:40:00 AM

Submitted By	Organization	Testifier Position	Testify
Lila Mower	Individual	Support	Written Testimony Only

Comments:

I support this measure.

SB-253-SD-1

Submitted on: 2/24/2025 11:31:55 AM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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 complied with this section.” The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Laura Bearden

SB-253-SD-1

Submitted on: 2/24/2025 2:18:52 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

Submitted By	Organization	Testifier Position	Testify
Joseph Graves	Individual	Oppose	Written Testimony Only

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

1. OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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 complied with this section.” The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Joseph Graves

SB-253-SD-1

Submitted on: 2/24/2025 3:41:59 PM

Testimony for JDC on 2/26/2025 9:40:00 AM

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

Comments:

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which deprives a “good faith” defense to an association if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). This change to the statute 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).

To avoid potential problems and litigation, the subject clause in subsection (d) should 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, the new subsection (g) provides that “[a]ny unit owner whose association board fails to 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 complied with this section.” The second sentence which shifts the burden of proof on the association 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 an owner 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 complied with Section 514B-148(a).

Respectfully submitted,

Laurie Sokach AMS, PCAM

Community Portfolio Manager

Kona Hawaii, since 1997

Dear Senator Rhoads, Chair, Senator Gabbard, Vice Chair, and Member of the Committee:

I OPPOSE S.B. No. 253 S.D.1.

First, I oppose the change to HRS Section 514B-148(d) which disallow an association a “good faith” defense if its board adopts a budget that omits the summary required by HRS Section 514B-148(a). 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).

Secondly, the second sentence of new sub-section (g), which shifts the burden of proof to the association, should be deleted. When a plaintiff brings an action, that party has the 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 bill as written may expose associations to frivolous, expensive litigation over whether they complied with Section 514B-148(a).

Respectfully submitted,

Pamela J. Schell

TESTIMONY IN SUPPORT OF SB253 SD1

For: The Committee on Judiciary (JDC)

DATE: Wednesday, February 26, 2025

TIME: 9:40 AM

PLACE: Conference Room 016 &
Videoconference
State Capitol
415 South Beretania Street

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committees,

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 protections 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 SD1 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.

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. 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. As of today, I am still waiting for the 2023 Annual Financial Audit Report, which is in violation of State law HRS 514B-150, for not being presented to the owners within a specified time period.

The people of Hawaii are counting on you to help them, and I respectfully ask all on the committee and all legislators to please support SB253 SD1 and the other bills listed.

Mahalo,

Gregory Misakian