

HAWAII LEGISLATIVE  
ACTION COMMITTEE

  
**community**  
ASSOCIATIONS INSTITUTE

P.O. Box 976  
Honolulu, Hawaii 96808

February 1, 2025

Senator Jarrett Keohokalole, Chair  
Senator Carol Fukunaga, Vice Chair  
Committee on Commerce and Consumer Protection  
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 Jarrett Keohokalole, Chair  
Senator Carol Fukunaga, Vice Chair  
February 1, 2025  
Page two

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 amendments.

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

**LATE**

**SB-253**

Submitted on: 2/3/2025 12:32:26 PM

Testimony for CPN on 2/5/2025 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Mark McKellar	Testifying for Law Offices of Mark K. McKellar, LLLC	Comments	Written Testimony Only

Comments:

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

Thank you for permitting me to submit comments on S.B. No 253. I support the intent of S.B. No. 253 but am suggesting changes.

First, I oppose the proposed clause in Section 2, subsection 1 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 all of the requirements of Section 514B-148(a). Section 514B-148(a) provides a comprehensive list of requirements for the summary:

§514B-148 Association fiscal matters; budgets and replacement reserves. (a) The budget required under section 514B-144(a) shall include a summary with at least the following details:

- (1) The estimated revenues and operating expenses of the association;
- (2) Disclosure as to whether the budget has been prepared on a cash or accrual basis;
- (3) The estimated costs of fire safety equipment or installations that meet the requirements of a life safety evaluation required by the applicable county for any building located in a county with a population greater than five hundred thousand; provided that the reserve study may forecast a loan or special assessment to fund life safety components or installation;
- (4) The balance of the total replacement reserves fund of the association as of the date of the budget;

(5) The estimated replacement reserves assessments that the association will require to maintain the property based on a reserve study performed by or on behalf of the association; provided that the reserve study, if not prepared by an independent reserve study preparer, shall be reviewed by an independent reserve study preparer not less than every three years; provided further that a managing agent with industry reserve study designations shall not be considered as having a conflict of interest for purposes of this paragraph;

(6) A general explanation of how the estimated replacement reserves assessments are computed and detailing:

(A) The identity, qualifications, and potential conflicts of interest of the person or entity performing the reserve study, update, or any review thereof;

(B) Disclosure of any component of association property omitted from the reserve study and the basis for the omission;

(C) Planned increases in the estimated replacement reserve assessments over the thirty-year plan; and

(D) Whether the actual estimated replacement reserves assessments for the prior year as defined in the study was less than the assessments provided for in the reserve study, and, if so, by how much, and explaining the impact of the lesser assessments on future estimated replacement reserves assessments;

(7) The amount the association must collect for the fiscal year to fund the estimated replacement reserves assessments; and

(8) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves assessments was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves assessments amount determined by the reserve study pursuant to paragraph (5).

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, I oppose the proposed second sentence in Section 2, subsection 2 of the measure (amending subsection (g)) which provides: “In any action to enforce compliance, a board shall have the burden of proving it has complied with this section.” This 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 complied with Section 514B-148(a).

Respectfully submitted,

Mark McKellar

**LATE**

**SB-253**

Submitted on: 2/3/2025 9:33:24 PM

Testimony for CPN on 2/5/2025 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
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 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 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

**LAW OFFICES OF PHILIP S. NERNEY, LLLC**

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

February 1, 2025

February 1, 2025

Honorable Jarret Keohokalole  
Honorable Carol Fukunaga  
Committee on Commerce and Consumer Protection  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **SB 253 SUPPORT**

Dear Chair Keohokalole, Vice Chair Fukunaga and Committee Members:

Like CAI, I support SB 253. SB 253 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 also clarifies standing requirements and the burden of proving compliance.

The Committee is respectfully requested to consider an amendment to Hawaii Revised Statutes §514B-148(a) as well. 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.

The Committee is respectfully requested to pass SB 253 with or without the suggested amendment.

Very truly yours,

  
Philip S. Nerney

**SB-253**

Submitted on: 2/2/2025 5:10:54 PM

Testimony for CPN on 2/5/2025 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dallas Walker	Individual	Support	Written Testimony Only

Comments:

I support this measure.

**SB-253**

Submitted on: 2/3/2025 1:50:39 AM

Testimony for CPN on 2/5/2025 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Greg Misakian	Individual	Support	Remotely Via Zoom

Comments:

I support SB253.

Gregory Misakian

THE SENATE  
THE THIRTY-THIRD LEGISLATURE  
REGULAR SESSION OF 2025

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair  
Senator Carol Fukunaga, Vice Chair

Lourdes Scheibert  
920 Ward Ave  
Honolulu, Hawaii 96814

Offers Comments:

I believe the intent of SB253 is to address the longstanding issue of deferred maintenance, a practice that has persisted for 50 years due to decisions made by volunteer board directors. However, I find the language too broad, making it difficult for an attorney to effectively challenge on behalf of owner/owners who has suffered damages.

Instead, I ask for support in the next legislative session from the **Commerce and Consumer Protection Committee, Chair Jarrett Keohokalole and Vice Chair Carol Fukunaga and members for the following proposal**. This proposal would better assist attorneys representing owners harmed by poorly maintained buildings in mediation, arbitration, or litigation.

I am writing to urge support for the proposed amendment to **§514B – Upkeep of Condominium; Conformance with County Ordinances and Codes**. The amendment states:

*"The association shall maintain and operate the property to ensure conformance with all laws, ordinances, and rules, including applicable county permitting requirements and building and fire codes adopted by the county in which the property is located, as well as any supplemental rules enacted by the county."*

## **Rationale for the Amendment:**

1. **Developer Compliance (§514B-05):** This amendment aligns with §514B-05, ensuring that condominium associations conform to land use laws just as developers are required to do.
2. **Conformance with Land Use Laws:** Adding this provision to **§514B** reinforces compliance with land use regulations, mirroring the developer's obligations under **§514B-05**.
3. **Fiduciary Duty of the Board of Directors:** This amendment ensures that condominium boards fulfill their fiduciary duty by maintaining the building in the condition in which it was turned over by the developer, preventing the common practice of deferred maintenance.

Additionally, this amendment provides continuity with my Declaration, which states:

**(b) Observance of Laws:** Maintain all common elements in a strictly clean and sanitary condition and comply with all laws, ordinances, rules, and regulations, whether existing or future, enacted by any governmental authority applicable to the common elements or their use.

For further context, please refer to **Testimonies SB593/HB376 (2023 Legislative Session)**, which present perspectives from both sides of this issue.

I appreciate your consideration of this important amendment to ensure responsible condominium governance and compliance with all relevant laws.

I will see you next year for support of this proposed amendment.

Sincerely,

Lourdes Scheibert  
Kakaako Condominium Owner

**SB-253**

Submitted on: 2/3/2025 8:21:06 AM

Testimony for CPN on 2/5/2025 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Michael Ayson	Individual	Support	Written Testimony Only

Comments:

I support this bill.

**SB-253**

Submitted on: 2/3/2025 8:47:13 AM

Testimony for CPN on 2/5/2025 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Lila Mower	Individual	Support	Written Testimony Only

Comments:

support

**SB-253**

Submitted on: 2/3/2025 8:48:34 AM

Testimony for CPN on 2/5/2025 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jonathan Billings	Individual	Support	Written Testimony Only

Comments:

I support this bill.

**LATE**

**SB-253**

Submitted on: 2/3/2025 12:02:51 PM

Testimony for CPN on 2/5/2025 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Carol Walker	Individual	Comments	Written Testimony Only

Comments:

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

Thank you for permitting me to submit comments on S.B. No 253. I support the intent of S.B. No. 253 but am suggesting changes.

First, I oppose the proposed clause in Section 2, subsection 1 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 all of the requirements of Section 514B-148(a). Section 514B-148(a) provides a comprehensive list of requirements for the summary:

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- (3) The estimated costs of fire safety equipment or installations that meet the requirements of a life safety evaluation required by the applicable county for any building located in a county with a population greater than five hundred thousand; provided that the reserve study may forecast a loan or special assessment to fund life safety components or installation;
- (4) The balance of the total replacement reserves fund of the association as of the date of the budget;

(5) The estimated replacement reserves assessments that the association will require to maintain the property based on a reserve study performed by or on behalf of the association; provided that the reserve study, if not prepared by an independent reserve study preparer, shall be reviewed by an independent reserve study preparer not less than every three years; provided further that a managing agent with industry reserve study designations shall not be considered as having a conflict of interest for purposes of this paragraph;

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(A) The identity, qualifications, and potential conflicts of interest of the person or entity performing the reserve study, update, or any review thereof;

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(C) Planned increases in the estimated replacement reserve assessments over the thirty-year plan; and

(D) Whether the actual estimated replacement reserves assessments for the prior year as defined in the study was less than the assessments provided for in the reserve study, and, if so, by how much, and explaining the impact of the lesser assessments on future estimated replacement reserves assessments;

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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, I oppose the proposed second sentence in Section 2, subsection 2 of the measure (amending subsection (g)) which provides: “In any action to enforce compliance, a board shall have the burden of proving it has complied with this section.” This 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 complied with Section 514B-148(a).

Respectfully submitted,

Carol Walker

**LATE**

**SB-253**

Submitted on: 2/3/2025 1:53:01 PM

Testimony for CPN on 2/5/2025 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Anne Anderson	Individual	Comments	Written Testimony Only

Comments:

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

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may expose associations to costly frivolous litigation over whether they complied with Section 514B-148(a).

Respectfully submitted,

Anne Anderson

**LATE**

**SB-253**

Submitted on: 2/3/2025 10:06:50 PM

Testimony for CPN on 2/5/2025 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Miri Yi	Individual	Support	Written Testimony Only

Comments:

Aloha Committee Chairs and Members,

Mahalo for the opportunity to provide testimony **in support** of this bill.

Mahalo Nui Loa,

Miri Yi

**LATE**

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

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Respectfully submitted,

*Pamela J. Schell*

**LATE**

**SB-253**

Submitted on: 2/4/2025 8:56:45 AM

Testimony for CPN on 2/5/2025 10:00:00 AM

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

Comments:

Dear Senator Keohokalole, Senator Fukunaga, and Member of the Committee:

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(7) The amount the association must collect for the fiscal year to fund the estimated replacement reserves assessments; and

(8) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves assessments was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves assessments amount determined by the reserve study pursuant to paragraph (5).

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, I oppose the proposed second sentence in Section 2, subsection 2 of the measure (amending subsection (g)) which provides: "In any action to enforce compliance, a board shall have the burden of proving it has complied with this section." This 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 complied with Section 514B-148(a).

Respectfully submitted,  
Lance Fujisaki