

TESTIMONY OF ALISON UEOKA

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Tuesday, March 15, 2022
10:00 a.m.

HB 2243, HD1

Chair Baker, Vice Chair Chang, and members of the Committee on Commerce and Consumer Protection, my name is Alison Ueoka, President of the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council support efforts to encourage the prompt maintenance and repair of condominium buildings in Hawaii. Many condominiums have been built in the 1970's and 1980's and now require major repairs to keep the buildings operational. These changes are often structural as we live in an island state surrounded by salt water. Pipes in buildings do not last forever and many have exceeded their lifespan but have not been replaced. Compounded by interior sprinkler requirements or the equally or more expensive fire life safety requirements, many in condominiums are not keeping up with the necessary repairs and maintenance because of cost.

Continued losses in this area mostly due to water losses from failed pipes in buildings have caused the market for condo building insurance to stagnate and insurers are reluctant to enter the market. The way condo associations operate and how decisions are made is a flawed system that relies upon the very owners who must pay for these repairs and maintenance to make the decision to increase every owner's costs. Many times, Boards are unable to increase their maintenance fees to an appropriate level

because they cannot get the requisite number of votes. Even then, Boards are and have been thrown out by a new Board who refuses to approve increases to maintenance fees even though they may be sorely needed. Most buildings here are in need of repair or replacement and are not on schedule. The process in which to make these big decisions, get estimates, have the Board or membership vote on financing and then to get the project started takes years. In the meantime, losses continue as components in the buildings fail.

The property insurance market is changing worldwide as we are experiencing the adverse impact of climate change. In addition, aging properties and properties that are not hardened against increasing weather events will have to pay more to insure themselves. Increasing losses impact reinsurers who provide insurance for insurance companies. Reinsurers provide worldwide coverage for insurers and a hardening market directly impacts what insurers must charge for their products.

We hope that measures such as these encourage those who own units in condominiums to make the appropriate investment to maintain their units.

Thank you for the opportunity to testify.

HB-2243-HD-1

Submitted on: 3/11/2022 6:48:58 PM

Testimony for CPN on 3/15/2022 10:00:00 AM

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

Comments:

We support HB2243.

Mike Golojuch, Sr., President, Palehua Townhouse Association



P.O. Box 976
Honolulu, Hawaii 96808

March 12, 2022

HB 2243,HD1, Support with Amendments

Chair Baker and Members of the Committee:

CAI supports the intent of HB 2243, HD1, which may have been introduced because of concerns resulting from the condominium collapse in Florida. Nevertheless, the bill seems to be unnecessary because Hawaii law already imposes the requirements stated in the proposed subsection 514B-137(c) of the bill (which may help explain why, to date, Hawaii has not experienced those Florida problems, even though condominiums have been developed in Hawaii since the early 1960's). The Florida law is quite different.

For example, subsection 514B-137 (a) already states that "the association is responsible for the operation of the property." While that may seem a vague statement, in fact, "operation of the property" is defined in section 514B-3 as follows:

Operation of the property" means the administration, fiscal management, and physical operation of the property, and includes the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements.

Moreover, Hawaii's condominium reserves law, section 514B-148, already requires, and has for more than 30 years, that the board prepare an annual budget that includes information on:

"The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association." Once again, while that statement may seem a somewhat vague, section 514 B-148 (h) defines replacement reserves as follows:

"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the property, including but not limited to roofs, walls, decks, paving, and equipment, that the association is obligated to maintain.

Essentially, the maintenance requirements stated in section 514B-137(c) are not necessary because the condominium already requires a condominium board of directors to periodically evaluate all the major components of the condominium project and collect funds for the maintenance, repair, or replacement of those components.

Similarly, the association and the board already have an obligation to maintain the property in accordance with applicable county codes. In addition, county officials already have the authority to require a building or structure to be maintained in a safe manner, consistent with county ordinances (which cover those issues in far more detail). Therefore, to that extent, those requirements stated in subsection (c) of HB 2243 are simply repeating obligations that already exist.

In summary, the condominium law already requires a condominium board of directors to take the actions proposed in subsection (c) of HB 2243 (which, again, may help explain why Hawaii condominiums have not experience the problems in Florida). Therefore, repeating those requirements in the condominium law may simply cause confusion while adding no real benefit.

Instead, it may be more efficient to include a new subsection (c) that reminds boards of directors of the obligations they already have under the condominium law to properly maintain, repair, and replace the common elements of their project. As a simple example, the first few lines of section 514B-137 (a) could be amended to read:

§514B-137 Upkeep of condominium. (a) Except to the extent provided by the declaration or bylaws, the association is responsible for the operation of the property as that term is defined in section 514B-3, . . .

This simple reminder will alert boards of directors to the full meaning of the term “operation of the property.” Alternatively, the full definition from section 514B-3 could be added to subsection (c) of HB 2243.

In addition, the proposed subsection (c) could be amended to simply state:

(c) The board of directors shall maintain the project in accordance with the requirements of the reserve study mandated under section 514B-148 and all state and county requirements applicable to the project.

In that way, the law will avoid the confusion that could arise if it appears that section 514B- 137 is imposing requirements that are contrary to requirements already in the law.

Finally, if there is a concern about association failing to meet the requirements of the reserves law, the Real Estate Commission requires the biennial registration of every condominium over 5 units (see section 514B-103). As part of that process, the commission could require that every condominium association submit a copy of their reserve study with the biennial registration.

Thank you for this opportunity to testify.

/s/ Richard Emery

Richard Emery

CAI Legislative Action Committee

HCCA

Hawaii Council of Community
Associations
www.hawaiicouncil.com

March 12, 2022

Senator Roslyn H. Baker, Chair
Senator Stanley Chang, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: **HB 2243, HD1 Relating to Condominiums**


Dear Chair Baker, Vice-Chair Chang and Members of the Committee:

Hawaii Council of Community Associations (“HCCA”) agrees with the intent and purpose of HB2243,HD1 and joins in the comments of Community Associations Institute (“CAI”) on this bill.

HRS 514B-137(a) already provides that the “association is responsible for the operation of the property.” Also, Hawaii (more then 25 years ago) enacted the budget and reserves provision in HRS 514B-148 that requires associations to establish and fund and update annually their reserve study to ensure that repairs and maintenance projects are planned and funded on a regular basis. HCCA, CAI and the DCCA (Real Estate Branch) include topics relating to how to manage and update an association’s reserves and reserve studies in their educational seminars - even more so after the Florida condominium collapse, which was a wake-up call to condo associations as to the importance and relevance of their reserve studies.

HCCA also concurs with CAI’s suggestion about the amendment to subsection (c).

Thanks for allowing me to testify on this bill.


Jane Sugimura
President

HB-2243-HD-1

Submitted on: 3/13/2022 2:31:59 PM

Testimony for CPN on 3/15/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard Emery	Testifying for Associa	Support	Written Testimony Only

Comments:

Assoica supports the amendments offered by CAI. As a Reserve Specialist, I served on CAI's National Reserve Study Public Policy Task Force that was created after the collapse of a Florida condominium. Florida's laws are vastly different than Hawaii. Current Hawai laws require Boards to maintain the project and Board's have the authority to do so. In Florida, prior homeowner approval was required and the Florida Boards tried to get the approval and failed. This can't happen in Hawaii. We do agree that safety is important and the CAI proposed amendments support safety.

HB-2243-HD-1

Submitted on: 3/14/2022 5:45:54 AM

Testimony for CPN on 3/15/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Lourdes Scheibert	Testifying for Kokua Council and a participant of Hui 'Oia'i'o.	Support	Remotely Via Zoom

Comments:

Committee on Consumer Protection & Commerce

Senator Rosalyn Baker, Chair, Senator Stanley Chang, Vice Chair

Date: Tuesday, March 15, 2022

Time: 10:00 AM

Place: Conference Room 229 & Videoconference

HB 2243, HD1

Chair Baker, Vice Chair Chang and members of the Committee on Consumer Protection & Commerce. Members: Lynn DeCoite, Joy A. San Buenaventura, Clarence K. Nishihara, Kurt Fevella, Gil Riviere

I am Lourdes Scheibert, a director at Kokua Council, one of Hawaii's oldest advocacy groups. We focus on policies and practices which can impact the well-being of seniors and our community. I am also a participant of Hui 'Oia'i'o.

I support HB2243 HD1, with the following amendment: Please correct the word "agency" and replace with the original word "agent".

The International Building Code:

Subsection 3401.2 Maintenance

Buildings and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices or safeguards which are required by this code shall be maintained in conformance with the code edition under which installed. **The owner or the owner's designated agent shall be responsible for the maintenance of buildings and structures.** To determine compliance with this subsection, the building official shall have the authority to require a building or structure to be reinspected. The requirements of this chapter shall not provide the basis for removal or abrogation of fire protection and safety systems and devices in existing buildings and structures.

For clarification on any part of the ROH
(link), <https://www.honolulu.gov/ocs/roh/rohonline.html>

Helpful information found in the Hawaii Condominium Bulletin, June 2021 by Lance Fujisaki, author of A General Overview of State and County Requirements “Frequently Asked Questions on Condominium Unit Renovations”. Fujisaki includes the details in City & County DPP permitting processes and requirements. (link: <https://cca.hawaii.gov/reb/files/2021/06/CB2106.pdf>)

Mr. Fujisaki should be contracted to include the City and County safety building codes: ROH 1990, as amended, Chapter 16 Section 3402 and in particular Section 3401.2 Maintenance and

Subsection 3401.3

Compliance with other codes:

Alterations, repairs, additions and changes of occupancy to existing structures shall comply with the provisions for alterations, repairs, additions and changes of occupancy in the International Fire Code, International Plumbing Code, International Property Maintenance Code, International Private Sewage Disposal Code, International Residential Code and ICC Electric Code.

This publication includes 514B-140 Additions to and alterations of condominium and educates board members how to manage their properties.

Further, CAI & HCCA should include this information in their education programs. Then, REC should distribute information about IBC 3401.2 and 3401.3 to all property management companies and their Real Estate Broker & employees including Association board directors, and their resident manager employees.

Thank-you

Lourdes Scheibert

The Senate
Committee on Commerce and Consumer Protection
Tuesday, March 15, 2022
10:00 a.m.

To: Chair Rosalyn H. Baker
Re: HB2243 HD1, Relating to Condominiums

Aloha Chair Baker, Vice-Chair Chang, and Members of the Committee,

I am Lila Mower, president of Kokua Council, one of Hawaii's oldest advocacy groups. We focus on policies and practices which can impact the well-being of seniors and our community.

I am also the leader of Hui 'Oia'i'o, informally known as "COCO," a coalition of over three hundred property owners--mostly seniors--from over 150 common-interest associations in Hawaii.

The Hui supports the intent of the measure to secure safety for the residents and occupants of condominiums, but the mere reiteration of Hawaii's state building code within HRS514B alone is inadequate when roughly 1/3 of the State's population resides in 173,000+ condominium units and many of those units are in high-rise constructions.

The State should require greater vigilance, mandating periodic engineering inspections to ensure building maintenance and structural integrity and require the reporting of serious conditions to local building departments to trigger immediate permits and repairs; reform reserve studies and funding requirements; and ensure easier and less costly access to association records.

It is not unusual for condominium associations (i.e., their boards) to keep documents that may contain potentially controversial, but not confidential nor litigious, information or material such as inspection or consultation reports 'under seal' and accessible to only those in management, themselves, and their agents, and to discuss those inspections and reports only during 'executive sessions.' Timely access must be provided to the owners who paid for those inspections, consultations, and their reports, and to those who occupy and use the property.

Condominium association boards should be educated as to their duties and responsibilities, association managers must be required to meet educational standards and to qualify for licensure which is necessary to enforce accountability, and reserve specialists must be qualified, educated, and licensed, too, and all must make structural integrity and life-safety issues a priority.

Condominium owners must be educated, too, to accept that repair and remediation projects are unavoidable as buildings age and that funds must be set aside on an ongoing basis to fund critical projects to protect the health and safety of condominium residents and occupants as well as that of the building structure.

Then, a review of mediations subsidized by the condominium-owner-funded Condominium Education Trust Fund and reported quarterly in the Hawaii Condo Bulletins reveals that many disputes originated from owners' concerns about deferred maintenance and the lack of funding for preventative maintenance.

In the cases reported to the Hui, owners' attempts to address these issues led to retaliation, deprivation of services, and even foreclosure (or the owner was compelled to sell), rather than having the root cause of their complaints, deferred maintenance, addressed. In some of those cases, the boards' costs of using "weaponized attorneys" to scare owners into silence far exceeded the costs of the actual repairs, by multiples. Only a few of these disputes were addressed in mediation because most owners remain unaware of that option, and of those taken to mediation, some failed resolution because associations (i.e., their boards) failed or declined to participate.

Thus, the State should offer broad "whistleblower" protection for those who report legal violations that create a substantial and specific danger to the public's health, safety, or welfare.

Finally, because the State has been aware of these concerns for decades but failed to enact enforceable measures necessary from a life-safety perspective, the State should provide financial assistance for condominium associations that must engage in major structural repairs.

Mahalo for the opportunity to testify.

HB-2243-HD-1

Submitted on: 3/12/2022 1:10:56 PM

Testimony for CPN on 3/15/2022 10:00:00 AM

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

Comments:

I viewed the testimony submitted on the house side. I find the HD of HB2243 severely wanting. There were several suggested amendments to the original bill and the only thing the house did was insert a defective effective date, supposedly to encourage more discussion. These defective dates often result in a bill failing in conference committee. They are nothing more than a stalling legislative tactic. People spend time testifying, rallying others to testify, get hope something will be approved, and often at the end of session believe that all their efforts and time have been wasted because of legislative games. We are now at full circle, starting again on this bill, because of the house's games. And you wonder why there is little trust in government and the electeds. You want to restore trust after the English/Cullen guilty pleas. Yet this nonsense continues. Without true reforms, not cosmetic ones, that will never happen.

I oppose the use of defective effective dates, period. All bills should become effective upon their approval unless there are material conditions which will cause a delay. In at least two instances I have seen bills up for hearing on Tuesday, March 15 which have effective dates in 90 years. Most if not all of us will be dead by then. What a joke. You may think you are clever, but to those of us looking in from the outside, you look stupid. We are not the idiots you imagine we are.

I assume this bill is a reaction to last year's condo collapse in Florida. It needs to deal with all structures. Instead of dealing with substance and getting the ball rolling, we are subject to games. Perhaps the young creative types can create a board game based on legislative practices, one which can be instructional for all, covering bribery, obfuscation, campaign contributions, canceling conference committees six hours early to stop passage of all bills still in conference committees, etc. The list is endless. And include penalties, fines, grand jury hearings, being sent to federal prison, etc. That list is endless too. They can even use you as consultants, as you are the experts. Show some courage. Make hard decisions. Stop playing games.

HB-2243-HD-1

Submitted on: 3/12/2022 4:17:34 PM

Testimony for CPN on 3/15/2022 10:00:00 AM

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

Comments:

I SUPPORT HB2243 HD1.

Buildings should follow building codes. This seems like complete common sense.

Thank you for the opportunity to testify,

Jeff Sadino

RE: Committee on Commerce and Consumer Protection

March 15, 2022

March 12, 2022

VIA WEB TRANSMITTAL

Hearing Date: Tuesday, March 15, 2022

Time: 10:00 a.m.

Place: Conference Room 229

Senator Rosalyn Baker, Chair

Senator Stanley Ching, Vice-Chair

Senate Committee on Commerce and Consumer Protection

Re: Comments regarding HB 2243, HD1

Dear Chair Baker, Vice-Chair Ching and Committee members:

I and my law firm represent hundreds of condominium and community associations across the State and I respectfully submit the following testimony regarding HB 2243, HD1 based my 23 years of experience practicing in this area of the law.

I support the intent behind HB 2243, HD1. The Bill, as I understand it, was introduced to address concerns resulting from the recent condominium collapse in Florida. However, Hawaii law already addresses the concerns that the Bill seeks to resolve.

For example, HRS § 514B-137 (a) currently provides that “*the association is responsible for the operation of the property.*” The term “operation of the property” is defined in HRS § 514B-3:

*Operation of the property” means the administration, fiscal management, and physical operation of the property, and **includes the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements.*** [Emphasis added.]

Moreover, Hawaii's condominium reserves law, HRS § 514B-148 currently mandates that the board prepare an annual budget that is to include information on: “*The estimated **replacement reserves** the association will require to maintain the property based on a reserve study performed by the association.*” HRS § 514 B-148 (h) defines replacement reserves:

*“Replacement reserves” means funds for the **upkeep, repair, or replacement** of those parts of the property, including **but not limited to roofs, walls, decks, paving, and equipment**, that the association is obligated to maintain.* [Emphases added.]

Consequently, the maintenance requirements stated in the proposed Bill with regard to HRS

§ 514B-137(c) are not necessary because Chapter 514B currently requires a condominium board of directors to periodically evaluate all of the major components of the condominium project and collect funds for their ongoing maintenance, repair, or replacement.

In summary, Chapter 514B already mandates that condominium boards act as proposed in HB 2243, HD1. Consequently, it would arguably be more beneficial to include a new subsection (c) that will serve to remind boards of their current obligation under Chapter 514B to properly maintain, repair, and replace the common elements of their project.

For example, HRS § 514B-137 (a) could be amended as follows:

HRS § 514B-137 Upkeep of condominium. (a) Except to the extent provided by the declaration or bylaws, the association is responsible for the operation of the property as that term is defined in section 514B-3, . . .

This reminder will alert boards to the full meaning of the term “operation of the property.” Alternatively, the full definition from HRS § 514B-3 could be repeated in HRS § 514B-137(c) of HB 2243, HD1.

Finally, the Real Estate Commission requires the biennial registration of every condominium over 5 units (see HRS § 514B-103). If there is a concern about associations failing to meet the requirements of the reserves law, then as a part of the biennial registration process, the Commission could require every condominium association to submit a copy of their most recent reserve study with their biennial registration. This effort would do more to ensure association boards are, in fact, complying with their duty to conduct the requisite reserve studies, fund their reserves and maintain their properties.

Thank you for your time and consideration.

Sincerely yours,

/s/ R. Laree McGuire
R Laree McGuire
Porter McGuire Kiakona, LLP

HB-2243-HD-1

Submitted on: 3/13/2022 9:34:57 AM

Testimony for CPN on 3/15/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Philip Nerney	Individual	Comments	Written Testimony Only

Comments:

The intent of HB 2243 HD1 is significant and appropriate. Fortunately, Hawaii has existing reserve requirements and condominium associations are responsible for "operation of the property" which is defined in HRS Section 514B-3 to include maintenance, repair, and replacement" etc. of the common elements.

The Committee is respectfully requested to consider CAI's proposed amendments. Those amendments would implement the essential intention of HB 2243 HD1, in an appropriate, actionable and enforceable manner.

HB-2243-HD-1

Submitted on: 3/14/2022 9:44:57 AM

Testimony for CPN on 3/15/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Dale A. Head	Individual	Support	Remotely Via Zoom

Comments:

Aloha: This is a common sense Bill which should be passed.