

Testimony of the Hawai'i Real Estate Commission

**Before the
House Committee on Judiciary & Hawaiian Affairs
Wednesday, April 2, 2025
2:00 p.m.
Conference Room 325 and Videoconference**

**On the following measure:
S.B. 146, H.D. 1, RELATING TO CONDOMINIUMS**

Chair Tarnas and Members of the Committee:

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

The purpose of this bill is to amend the conditions and procedures of alternative dispute resolution methods for condominium-related disputes, including the use of evaluative mediation or binding arbitration.

This bill establishes minimum qualifications of mediators and arbitrators who provide alternative dispute resolution supported by the CETF. The Commission takes no position on the experience requirements specified under proposed section 514B-F, but notes that: (1) it does not contract with individual mediators, and instead, contracts with mediation providers to provide alternative dispute resolution supported by the CETF; and (2) there appears to be a typographical error on page 10, line 3:

"An arbitrator shall have [~~five~~] five years of experience"

The Commission supports the initial fee of \$150 to be paid by each party to the mediator on page 8, line 1, which is a reduction from the current statutory fee of \$375 for evaluative mediation under section 514B-161(g)(1), Hawaii Revised Statutes (HRS). This reduced amount would address anecdotal concerns the Commission has received from condominium owners who were reluctant to pursue evaluative mediation, citing its cost. The Commission recommends an initial fee of \$150 to similarly be required for voluntary binding arbitration under proposed section 514B-E, HRS, to ensure both parties have a tangible commitment to participating in binding arbitration.

Further, on page 8, lines 2-6, it provides the Commission authority to waive the initial fee for an individual who provides satisfactory evidence that the fee would pose an unreasonable economic burden. As the Commission meets on a monthly basis, the

Commission believes that requests for fee waivers could be processed more expeditiously if the mediators instead of the Commission were provided this authority.

Currently, the Commission, through the Condominium Education Trust Fund (CETF), provides subsidized support for facilitative mediation, evaluative mediation, and voluntary binding arbitration. As currently drafted, proposed section 514B-C, HRS, appears to limit the CETF to provide support for only evaluative mediation and binding arbitration. The Commission is opposed to reducing the number of alternative dispute resolution options available for the CETF to provide subsidized support, and respectfully requests for this bill to include facilitative mediation as an option for alternative dispute resolution.

Thank you for the opportunity to testify on this bill.



P.O. Box 976
Honolulu, Hawaii 96808

March 30, 2025

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

Re: **SB 146 SD1 HD1 SUPPORT**

Dear Chair Tarnas, Vice Chair Poepoe and Committee Members:

CAI supports SB 146 SD1 HD1. SB 146 SD1 HD1 will protect consumers by improving alternative dispute resolution processes for condominium-related disputes.

SB 146 SD1 HD1 clarifies the law and makes law changes that are warranted based on experience. SB 146 SD1 HD1 also includes conforming amendments.

Notably, complaints about the assessment of fines are effectively addressed. SB 146 SD1 HD1 prohibits the reported practice of charging attorneys' fees to collect a disputed fine.

SB 146 SD1 HD1 requires fines to be reasonable, and notice of the assessment of a fine must conform to due process requirements. An appeal process must be provided, and remaining disputes will be finally resolved by the small claims court.

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

SB 146 SD1 HD1 provides support from the condominium education trust fund for evaluative mediation and binding arbitration. This valuable subsidy will contribute to the prompt and economical resolution of condominium-related disputes that do exist.

Honorable David A. Tarnas
Honorable Mahina Poepoe
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SB 146 SD1 HD1 substantially lowers the fee to participate in evaluative mediation, and authorizes waiver of the fee altogether if the fee poses an unreasonable economic burden. SB 146 SD1 HD1 promotes easy access to alternative dispute resolution processes and is user friendly.

CAI notes an apparent typographical error in 514B-F(2) ("mfive"). CAI would prefer that the experience requirements specified in 514B-F were more substantial.

The Committee is respectfully requested to consider a proposed amendment to the definition of evaluative mediation:

"Evaluative mediation" is a mediation process in which the mediator not only facilitates communication and the exchange of proposals but includes oral and/or written communication of the mediator's evaluation of the strengths and weaknesses of each party's positions, of their exposure to potential liability, and/or of other factors affecting the potential outcome of a condominium-related dispute.

The current definition indicates that a mediator's assessment "shall only be available to the parties if the parties fail to settle during the evaluative mediation." Mediation is a dynamic process and mediators use a variety of techniques throughout the process. Parties may wish to solicit a mediator's views at any point in the mediation process and the applicable definition should not limit the opportunity for the parties to do so.

The purpose of the words "subject to subpart __" in Section 8 (HRS §514B-104(a)(11)) is unclear. The Committee is respectfully requested to review the need for those words.

The Committee is requested to take note that SB 253 SD2 HD1 (or HB 70 HD1 SD1), if passed, would also amend HRS §514B-148(g) so conforming amendments should be considered.

CAI is aware of other testimony suggesting the deletion of §514B-104(b)(2). CAI does not support deletion of that section but does not object to its amendment, as follows:

(2) After giving notice to the tenant and the unit owner and an opportunity to be heard, in accordance with section 514B-B, levy reasonable fines against the tenant for the violation, provided that a unit owner shall be responsible for the conduct of the owner's tenant and for any fines levied against the tenant or any legal fees incurred in enforcing the

Honorable David A. Tarnas
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March 30, 2025
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declaration, bylaws, or rules and regulations of the
association against the tenant; and

CAI respectfully requests the Committee to pass SB 146 SD1
HD1, preferably with amendments referenced herein.

CAI Legislative Action Committee, by


Its Chair

SB-146-HD-1

Submitted on: 3/30/2025 12:55:15 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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

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

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

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

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

The new Section 514B-B(b) found on page 4 of the bill provides that no attorneys' fees "with respect to a fine" shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable". This is somewhat ambiguous and could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation. To make it clear that the attorneys' fees referenced are attorneys' fees incurred in connection with the imposition of a fine, it is suggested that line 9-11 on page 4 of the bill be revised to read:

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

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

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

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

Respectfully submitted,

Mark McKellar

SB-146-HD-1

Submitted on: 3/30/2025 2:16:37 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

I support SB146 as it prohibits an association from levying attorney fees on owners for fines unless the fine is first addressed at small claims court. I further support the testimony of CAI.

SB-146-HD-1

Submitted on: 3/28/2025 10:04:37 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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

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

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

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

The association may be precluded from seeking reimbursement of attorneys’ fees and costs until the fine becomes “collectible.” This may require associations to wait months after the covenants are violated before collecting attorneys’ fees. In the meantime, the Association must pay the attorneys’ fees as a common expense, which impacts all owners. Important projects to maintain the building will be pit on hold because the funds aren’t there.

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

SB-146-HD-1

Submitted on: 3/29/2025 5:04:45 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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

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

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

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

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

The new Section 514B-B(b) found on page 4 of the bill provides that no attorneys' fees "with respect to a fine" shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable". This is somewhat ambiguous and could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation. To make it clear that the attorneys' fees referenced are attorneys' fees incurred in connection with the imposition of a fine, it is suggested that line 9-11 on page 4 of the bill be revised to read:

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

Respectfully submitted,

Anne Anderson

SB-146-HD-1

Submitted on: 3/29/2025 6:02:42 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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

Respectfully submitted,

Mary Freeman

Ewa Beach

SB-146-HD-1

Submitted on: 3/29/2025 6:12:47 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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Respectfully submitted,

John Toalson

SB-146-HD-1

Submitted on: 3/30/2025 1:36:24 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

SB146 SD1 HD1 is still in need of amendments, but I do see that the previous committee listened to my concerns regarding early neutral evaluation.

One major concern is that fines and attorneys' fees would have to be paid upon demand, but can be disputed. If a fine or attorneys' fees to collect that fine are not valid, fair, or reasonable, I believe every owner has a right to dispute and withhold payment until it is proven that the debt is owed, and the process to dispute and request a fair and impartial association hearing, mediation, or judicial hearing have played out.

Also, I have concerns with this section:

"Evaluative mediation" includes an assessment, either orally or by a written statement, of the strengths and weaknesses of each party's case and offers opinions or recommendations about possible outcomes, including an estimate of the damages for which each party may be liable; provided that the assessment shall only be available to the parties if the parties fail to settle during the evaluative mediation."

Why is the assessment only available to the parties if they fail to settle? It should be provided either way. This assessment should also be in writing so there is no question what was concluded in the mediation.

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

And why are you still striking out this important section meant to provide accountability for Board members?

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

HB890 and its companion bill SB1265, which will establish an Ombudsman's Office for Condominium Associations at no cost to the State of Hawaii, is the only real solution to finally provide a place to go to easily resolve disputes without excessive costs, in addition to addressing the serious issues of misconduct and corruption at condominium associations throughout Hawaii, and the many predatory attorneys who earn their living on the backs of condominium owners.

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

The residents of Hawaii will not forget the continuing saga of how poorly our legislators have treated condominium owners in 2025. The HGIA loan bills, HPIA insurance bills and other insurance bills, will also not be the savior for this session, as all of these are flawed. But our legislators continue to push them through, so you can say "we did something for condominium owners."

Gregory Misakian

SB-146-HD-1

Submitted on: 3/30/2025 3:33:43 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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

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

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

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

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

The new Section 514B-B(b) found on page 4 of the bill provides that no attorneys' fees "with respect to a fine" shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable". This is somewhat ambiguous and could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation. To make it clear that the attorneys' fees referenced are attorneys' fees incurred in connection with the imposition of a fine, it is suggested that line 9-11 on page 4 of the bill be revised to read:

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

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

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

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Respectfully submitted,

Michael Targgart

SB-146-HD-1

Submitted on: 3/30/2025 6:34:56 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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Respectfully submitted,

Jmt

SB-146-HD-1

Submitted on: 3/30/2025 9:05:43 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Colonel Mark L Brown, USA (Ret.)	Individual	Oppose	Written Testimony Only

Comments:

PLEASE OPPOSE SB146 SD1 HD1 because it rescinds an important HRS 514B-157 protection for Hawaii citizen condo owners who pursue legitimate claims against developer, and other, big-money interests.

The language, as currently written in HRS 514B-157, reads *“If any claim by an owner is not substantiated in any court action against an association, any of its officers or directors, or its board to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys’ fees incurred by an association shall be awarded to the association, unless before filing the action in court the owner has first submitted the claim to mediation, or to arbitration under subpart D, and made a good faith effort to resolve the dispute under any of these procedures.”* Note that SB146 SD1 HD1 entirely repeals (lines out) this language on page 38 and replaces it with lengthy, and ambiguous, language on pages 1 to 36 that is far more favorable to big-money developer and association interests, at the expense and peril of Hawaii citizen condo owner interests.

Had the protection currently provided by HRS 514B-157 not existed in 2019, I would have never taken the extra personal financial risk of pursuing my own legitimate claim against fraud, and the retaliation I experienced for reporting that fraud. The current statute further provides condo owners with a powerful financial incentive to pursue mediation or arbitration in good faith first, before filing a lawsuit. This I did in my case in 2020, but without any resolution. The highlights of my case, and the subsequent outcome three years later, were reported by Honolulu Civil Beat in a July 2023 article entitled “Prominent Condo Directors Pay \$600,000 To Settle Retaliation Claim”. This article, and the many supportive comments by Civil Beat readers, can be accessed via the following link: <https://www.civilbeat.org/2023/07/prominent-honolulu-condo-directors-pay-600000-to-settle-retaliation-claim/>

Importantly, Civil Beat described my case as one *“that pitted a retired Army colonel against executives with leading developers...”* and one that *“...had been closely watched by advocates for condo owners as the first major test of a 2017 law [HRS 514B-191] designed to prevent condominium boards from retaliating against owners, board members and managers who raise questions about potential violations of Hawaii condo law or association bylaws.”* I am hopeful that my relative success may have helped prevent dozens of subsequent retaliation cases that Hawaii condo owners would have otherwise experienced.

I believe that the language in SB146 SD1 HD1 which rescinds the consumer protection at issue was drafted by Attorney Phil Nerney who has made his career, and fortune, by mostly representing big-money developer and condo association interests. Mr. Nerney previously proposed this rescission in early 2024 when he served as the Chairman of the CPR task force which was empowered by the legislature to examine Hawaii's condo statutes at the time. I know this because I testified via Zoom against Mr. Nerney's proposal. Fortunately, Mr. Nerney's proposal was voted down by the House and Senate members of the CPR task force as well as other members (such as Kokua Council Chairwoman Lila Mower) who stood up for Hawaii citizen interests. I understand that Mr. Nerney gained his position as the CPR task force chairman due to the influence of former House Majority Leader Scott Saiki. Because of this, and other instances where Mr. Saiki favored big-money developer and association interests over Hawaii citizen condo owner interests, we the constituents of his House District voted him out of office last year.

Thank you.

Very Respectfully,

MARK L. BROWN

Colonel, U.S. Army (Retired)

SB-146-HD-1

Submitted on: 3/30/2025 12:04:35 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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Respectfully submitted,

Carol Walker

SB-146-HD-1

Submitted on: 3/30/2025 1:59:17 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Opposition to [SB 146 SD1 HD1](#) which guts the "due-process" protections that we have fought for over the last decade. Little by little, the protections of LY2018 Act 195 have been eroded,

PLEASE OPPOSE SB146 SD1 HD1 because it rescinds an important HRS 514B-157 protection for Hawaii citizen condo owners who pursue legitimate claims against developer, and other, big-money interests.

Lourdes Scheibert

SB-146-HD-1

Submitted on: 3/30/2025 2:04:28 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Marcia Kimura	Individual	Oppose	Written Testimony Only

Comments:

I vehemently oppose SB146 SD1 HD1.

The author is hell bent on destroying any semblance of justice to condo owners, and is blatantly in favor of forging ahead with destruction (See Section 8. (19)) of the mandates of HRS 514B-517 that make it possible to avert costly litigation if efforts at arbitration or evaluative mediation are first initiated by owners.

As regards the Condo Education Trust Fund, my view is that this funding should benefit contributing owners by making reasonable legal consultation available to rank-and-file owners who stand to be unfairly devastated by the unequal opposing might of boards and their attorneys.

And in reference to a *Hawaii Bar Journal* article statement that "Financial and/or personal stressors can overwhelm a person's normal coping mechanisms....diagnosable mental illness....", it must surely be recognized that when condo owners who should be protected, not threatened by the industry, are forced into adversarial threats to their financial well-being by the unjust actions of their associations' boards and the attorneys they hire, the result is invariably mental distress, not "illness."

Subject: Strong Opposition to SB146 SD1 HD1 — Protect Hawaii Condo Owners

Aloha Chair and Committee Members,

My name is Aaron Cavagnolo, and I am a Hawaii condo owner who has been dealing with serious issues involving my association for years. Based on this experience, I can confidently say that the risks for owners going to court are already far too great. SB146 SD1 HD1 would only make things worse — tipping the scales even further against ordinary owners and in favor of powerful associations and developers.

In my years of experience, I've participated in or listened to public hearings and testimony related to condo law reforms — including meetings of the Condo Property Regime Task Force. **Never once have I heard a board member testify that individual owners have too much power.** The only people I've heard make that argument are professionals like attorney Phil Nerney — who, from my understanding, stands to benefit financially from laws that make it easier for associations to charge individual owners for legal expenses.

I respectfully **urge you to OPPOSE SB146 SD1 HD1** because it rescinds a crucial protection in **HRS 514B-157**, which currently gives condo owners a fair opportunity to pursue legitimate claims without the looming threat of crushing legal fees — as long as they first attempt good-faith mediation or arbitration.

The **current language in HRS 514B-157** protects both sides:

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

SB146 SD1 HD1 appears to **entirely repeal this language** and replaces it with **vague** provisions that open the door to abusive fee shifting and discourage any owner — even those with valid claims — from seeking justice.

HRS 514B-157 is important — it ensures a balanced and fair playing field, especially for those of us who don't have access to association lawyers and resources. Weakening or removing this protection only makes it harder for owners to assert their rights.

If this bill passes, even more owners will feel forced to give up their rights, stay silent about violations, or leave their homes. Please stand with everyday Hawaii residents who simply want to live peacefully and safely in their homes. **Please vote NO on SB146 SD1 HD1.**

Mahalo for your consideration,
Aaron Cavagnolo

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

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

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

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

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

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

The new Section 514B-B(b) found on page 4 of the bill provides that no attorneys’ fees “with respect to a fine” shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be “collectable”. This is somewhat ambiguous and could be construed as prohibiting an association from recovering attorneys’ fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or

that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation. To make it clear that the attorneys' fees referenced are attorneys' fees incurred in connection with the imposition of a fine, it is suggested that line 9-11 on page 4 of the bill be revised to read:

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

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

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

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

Respectfully submitted,

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

SB-146-HD-1

Submitted on: 3/30/2025 8:17:08 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Diann Karin Lynn	Individual	Oppose	Written Testimony Only

Comments:

I am writing to STRONGLY OPPOSE [SB 146 SD1 HD1](#). This bill as written totally guts the "due-process" protections that condo advocates have fought for over the last **decade.** Please, let's continue to move forward, not backward! It's time to get the condo industry people out of the condo bill writing process. Please protect condo owners instead.

SB-146-HD-1

Submitted on: 3/31/2025 12:30:21 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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

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

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

Respectfully submitted,

Primrose Leong-Nakamoto

SB-146-HD-1

Submitted on: 3/31/2025 7:59:36 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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Respectfully submitted,
Lance Fujisaki

SB-146-HD-1

Submitted on: 3/31/2025 8:17:44 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

TESTIMONY IN STRONG OPPOSITION TO SB146 SD1 HD1

Aloha e Chair Rep. David A. Tarnas, Vice Chair Rep. Mahina Poepoe, and Honorable Members of the Committee on Judiciary & Hawaiian Affairs:

My name is Jessica Herzog, and I am a condominium owner and board member of an association that was the victim of large-scale embezzlement by someone inside our management company. While I previously testified in support of reform efforts under SB146 SD1, I must now speak out in strong opposition to SB146 SD1 HD1, which has taken a troubling turn. The latest draft removes one of the most critical safeguards homeowners currently have under HRS §514B-157: the right to fair and impartial due process.

I offer this testimony in my personal capacity along side about 40 owners who echo the sentiments that follow—**not on behalf of my association**—but as someone who has witnessed firsthand the real-world consequences of how disputes, collections, and enforcement are handled in condominium communities. I’ve seen these processes from all sides, and I can say with confidence: this bill, in its current form, does not protect homeowners. Instead, it places them at even greater risk, tipping the scales even further in favor of the condo industrial complex—a system desperately in need of oversight and regulation, not more power.

A Dangerous Shift in Risk

SB146 SD1 HD1 unquestionably repeals the existing homeowner protection in HRS §514B-157 and replaces it with a “winner-takes-all” system for attorneys’ fees in condo disputes. The good-faith mediation safe harbor for owners is removed, as shown by the explicit language:

- “SECTION 14. Section 514B-157, Hawai‘i Revised Statutes, is repealed.”

It is replaced with a blanket prevailing-party fee rule.

The new language fundamentally alters the original purpose of the statute. Current law encourages owners to seek mediation first by shielding them from fee liability if they make a good-faith effort to resolve the matter out of court. SB146 SD1 HD1 offers no such shield. Instead, it imposes a strict “loser-pays” model—regardless of whether mediation was attempted.

Real Consequences for Real People

For unit owners, this is a serious loss of protection. Under SB146 HD1, an owner who challenges their association—even for valid reasons—but fails to prevail in court will be liable for the association’s legal fees. That can be financially devastating.

In practice, this dramatically raises the stakes for owners and will discourage legitimate claims. Associations, on the other hand, face less risk: they are more assured of recovering legal fees and no longer need to worry about owners’ good-faith attempts at resolution interfering with cost recovery.

Final Thoughts

SB146 SD1 HD1 weakens homeowner protections by repealing the attorneys’ fee safe harbor. Where the current law gives owners a chance to mediate and still "fight another day" in court without financial ruin, SB146 SD1 HD1 removes that safety net. The balance of power tilts even further toward associations, while everyday owners are left to weigh the risk of going bankrupt simply for asserting their rights.

This bill—while promoting ADR in theory—punishes owners in practice, even when their concerns are legitimate and unresolved.

Instead of advancing SB146 SD1 HD1—which strips away critical protections and increases financial risk to owners—you should pause to hear what homeowners in Hawai‘i truly need.

We do not need more convoluted legal frameworks that empower associations and enrich attorneys. What homeowners truly need is a state-run, AOAO-funded HOA Office—a centralized, neutral body that exists to educate owners, mediate disputes, and hold boards accountable.

This office must be independent of industry influence, free from the financial conflicts and political biases that currently shape the system. It should be staffed by qualified, retired volunteers and public-minded experts—not industry insiders or “condo consultants” double-dipping off the very communities they helped overregulate and exploit.

Until such an office exists, no legislation should pass that further increases the imbalance between ordinary homeowners and the powerful interests that govern them.

I respectfully urge you to reject SB146 SD1 HD1 and begin building solutions that truly represent and protect the people who call these communities home. We need policies that protect:

- Kupuna trying to keep their homes
- Working families crushed by rising fees
- Owners penalized for speaking up or falling behind in tough times

Sincere regards & mahalo,

Jessica Herzog
Condo Owner, Notary Public
Member of the National Association of Parliamentarians
mssc403@gmail.com | 707.340.5786

See what your constituents really want:
<https://www.leewardrepair.com/2025/01/30/condo-alert/>

SB-146-HD-1

Submitted on: 3/31/2025 9:03:17 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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Respectfully submitted,

Laura Bearden

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

To: Representative David A. Tarnas, Chair
Re: SB 146 SD1 HD1, Relating to Condominiums

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

Mahalo for the opportunity to testify in **strong opposition** to SB 146 SD1 HD1 which in its current iteration redoubles an ADR method which fails this suggestion made a decade ago:

“[T]here should be a robust and meaningful opportunity to come to terms before attorneys fees become a significant factor.”¹

The Senate and House committees that reviewed earlier versions of this measure noted that

“although existing law provides for alternative dispute resolution methods in condominium-related disputes, these disputes often result in the parties engaging in a lengthy litigation process and incurring attorneys' fees and costs,” and

“it is in the interests of unit owners and associations to resolve disputes in an efficient and equitable manner.”

However, the currently proposed version, SB 146 SD1 HD1, does **not** address these concerns.

THE INEFFECTIVENESS OF MEDIATION. SB 146 SD1 HD1 emphasizes evaluative mediation as the initial method of legal recourse for condominium members, however mediation has **not** been successful.

Reports found in the Real Estate Commission publication, the *Hawaii Condominium Bulletin*,^{2,3,4} were studied, tallied, and placed in a chart for your review along with recent copies of those reports for cross-reference.⁵ The bulletin does not differentiate between evaluative and facilitative mediation.

¹ Nerney, Philip S. “Professional Mediation of Condominium-Related Disputes,” *Hawaii Bar Journal*, July 2015.

² <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2011-2015/>

³ <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2016-2020/>

⁴ <https://cca.hawaii.gov/reb/hawaii-condominium-bulletin-2021-2025/>

⁵ Please refer to Exhibit B for the most recently produced matrix and copies of the most recent issues of the “Mediation Case Summaries” from the *Hawaii Condominium Bulletin*, provided to represent the sources of the data.

However, the Real Estate Commission’s annual reports for recent years^{6,7,8} when evaluative mediation was subsidized by the Condominium Education Trust Fund (CETF) reflect this breakdown:

<u>Year</u>	<u>Evaluative Mediations</u>	<u>Facilitative Mediations</u>
2016	8	28
2017	22	12
2018	29	18
2019	29	9
2020	37	10
2021	54	15
2022	53	13
2023	41	18
2024	41	20
Total	314	143

Since mid-2015, when evaluative mediations were first subsidized by the Condominium Education Trust Fund (CETF), a large majority of the mediation cases reported, 80%, were initiated by owners against their association and/or board.

Nearly all disputes, over 95%, were disputes about violations or interpretations of HRS 514B or the association’s governing documents (e.g., Declaration, By Laws, House Rules, Resolutions) for which, normally, mediation would be discouraged if an issue of law needs to be ruled on to settle the dispute because mediators cannot make legal determinations.

However, SB 146 SD1 HD1 proposes that “[a] condominium-related dispute subject to mandatory evaluative mediation shall be any dispute that involves the interpretation or enforcement of the association’s declaration, bylaws, or house rules.”

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

Of the cases that reached an agreement, many of those which were settled in favor of owners were allegedly disregarded, lacking enforcement.

The causes of mediation’s shortcomings for condominium association related disputes should be studied before it is endorsed and expanded by SB 146 SD1 HD1. One cause is found in HRS 514B-146(g) that dis-incentives participation or resolution by associations and the proposal in SB 146 SD1 HD1 is correct to rescind this section:

⁶ <https://cca.hawaii.gov/reb/real-estate-commission-annual-report-2015-2020/>

⁷ <https://cca.hawaii.gov/reb/annual-report-of-the-real-estate-commission-2021-2025/>

⁸ https://www.capitol.hawaii.gov/sessions/session2025/bills/DC153_.PDF

“The mediation shall be completed within sixty days of the unit owner's request for mediation; provided that if the mediation is not completed within sixty days or the parties are unable to resolve the dispute by mediation, the association may proceed with collection of all amounts due from the unit owner for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense.

INEQUITY IN MEDIATION. One of the merits of mediation is that it is supposed to be neutral and impartial. One of the merits of the American legal system is that “everyone should have ‘an equal chance, an equal opportunity to access privileges and immunities, and non-discriminatory treatment.’”⁹ That means “no person or class receives privileges or punishments in any discriminatory sense.”¹⁰ “When there is a significant power imbalance among the parties, you should avoid mediation.”¹¹

In earlier legislative sessions, mediation and arbitration were promoted as inexpensive avenues to resolve disputes, however, owners’ experiences contradict that assertion. Owners who can afford the initial fee to participate in mediation complain of the additional thousands needed to proceed against a platoon of association attorneys representing the association and/or board.

Associations have the combined financial resources of their members, including insurance coverage that protects board members from personal liability, and the ability to raise additional funds through assessments from owners.

But an owner has only his or her resources, a circumstance which precludes many owners from seeking justice.

This imbalance was somewhat ameliorated by HRS 514B-157 which protects plaintiffs from having to pay the defendants’ legal fees if the plaintiff initially attempts mediation, then subsequently proceeds to litigation. Unfortunately, SB 146 SD1 HD1 wrongly eliminates this protection.

Also inequitable is that SB146 SD1 HD1 does not address the costs and damages incurred by the party injured by the lack of impartiality if that partiality is discovered *after* an evaluation is completed. This must be corrected.

OTHER MOTIVES THAT INFLECT MEDIATION. A fellow advocate wrote, “The current dispute resolution process is attended by those who may be more interested in the ‘dispute’ rather than the ‘resolution.’ The more they [attorneys for the associations] prolong the dispute, the greater their reward, and one wonders if, personally, the ‘resolution’ has little meaning for them as they will be compensated regardless [of] how the ‘dispute’ is settled.”

⁹ <https://mediate.com/equality-and-mediation/>

¹⁰ Ibid.

¹¹ <https://www.resminilawoffices.com/blog/when-is-mediation-not-a-good-idea/>

This concern is heightened because some legal professionals, including those who lobby at the Legislature, market their mediation services to associations, creating an additional income stream for themselves while creating the possibility of biased and lopsided ADR favoring associations.

A recent significant discovery further expands doubt that evaluative mediation can be impartial. It was revealed that mediators were imbued by their instructor with disparaging misinformation about condominium owners during a mediators' class.¹² "[I]f a mediator appears to exercise control or influence over the proceeding to steer it in favor of one of the participants, the mediator's effectiveness may be compromised...Moreover, all such conduct violates a mediator's ethical duties to treat the parties respectfully, remain impartial and safeguard the parties' rights of self-determination."¹³

BETTER ADR IS NEEDED. On November 2, 2023, Dathan Choy, Condominium Specialist with DCCA, provided the Real Estate Branch's estimate of the number of condominium units and associations in Hawaii, which, when compared to the latest US Census data, revealed that a significant portion, **more than 40%, of Hawaii's housing stock are condominium units.**

In 2024, surveys conducted by third-party entities, Frontdoor.com¹⁴ and Rocket Mortgage,¹⁵ reported the dissatisfaction experienced by residents of association governed communities.

Frontdoor.com,¹⁶ a membership service for home repairs and maintenance needs, reported:

- "54% [of surveyed association members] have had negative experiences" with their associations;
- "1 in 3 have had an [association] experience that made them want to leave their community;"
- more than half of [association] members surveyed cited "inconsistent rule enforcement;"
- 40% reported "poor communication or unresponsive board" "which left them feeling powerless when it came to important neighborhood decisions;" and
- "This continuous rise in costs, without a clear improvement in services, leads to further dissatisfaction."

Additionally, Frontdoor.com noted that:

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

¹² Refer to Exhibit B

¹³ <https://www.jamsadr.com/blog/2022/when-mediation-conduct-goes-wrong>

¹⁴ <https://www.frontdoor.com/blog/real-estate/pros-and-cons-of-hoa-what-homeowners-really-think>

¹⁵ <https://www.rocketmortgage.com/learn/assessing-the-association>

¹⁶ <https://www.frontdoor.com/blog/real-estate/pros-and-cons-of-hoa-what-homeowners-really-think>

the penalties felt unfair or excessive, adding to frustration” and “14% [said] the fine was unfair and excessive.”

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

- “[Homeowner] associations have increased dues by as much as 300% in certain parts of the country over the past year. In return, homeowners expect to get community benefits,” however, “homeowners aren’t all happy in [homeowner associations];”
- only 63% of owners surveyed felt that their association honestly handles its finances;
- 31 percent thought that their boards have too much power;
- 40 percent of homeowners and 19 percent of directors believe that their boards are incompetent.
- less than half, 49 percent, said that they are likely to buy in an association governed community again;
- and 10 percent would go as far as “consider selling their homes for reasons related to their [association];” and
- a startling 37 percent of directors said that they disliked having a homeowners association, compared to 57 percent of owners overall.¹⁷

The national trade industry group, Community Associations Institute, disclosed in their 2024 “Homeowner Satisfaction Survey”¹⁸ that nearly one of out of every seven (1/7) respondents answered **un**-favorably to the question, “How satisfied are you with overall services across regions and communities?” The 2024 responses to that question are In percentages:

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

Further study of their data revealed growing homeowner dissatisfaction over the last five years.

Homeownership is central to “the American Dream,” however the affordability of homes is a statewide crisis. High density condominium units are more financially feasible than single family dwellings for most of us, thus Legislators should make the acquisition and ownership of condominium units less painful and more appealing.

Mahalo for the opportunity to submit these comments in opposition to SB 146 SD1 HD1.

¹⁷ <https://www.rocketmortgage.com/learn/assessing-the-association>

¹⁸ https://foundation.caionline.org/research/survey_homeowner/homeowner-satisfaction-survey-dashboard/

EXHIBIT A

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

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

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

December 2024

Mediation Case Summaries

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

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

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

Dispute Prevention and Resolution, Inc.

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

Mediation Case Summaries

Kauai Economic Opportunity

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

Lou Chang

AOUC vs Owner	Dispute over the governing documents regarding access to perform repairs and maintenance	Mediated to agreement
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Mediation Center of the Pacific

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

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

Oahu

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

Maui

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

West Hawaii

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

East Hawaii

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

Kauai

Kauai Economic Opportunity, Inc.
2804 Wehe Road
Lihue, HI 96766
Tel: (808) 245-4077 Ext. 229 or 237
Fax: (808) 245-7476
Email: keo@keo-inc.org

Lou Chang, A Law Corporation

Mediator, Arbitrator, Attorney
Member, National Academy of Arbitrators
P.O. Box 61188, Honolulu, Hawaii 96839
Tel: (808) 384-2468
Email: louchang@hula.net
Website: www.louchang.com

Charles W. Crumpton

Crumpton Collaborative Solutions LLC
Tel: (808) 439-8600
Email: crumpton@chjustice.com
Websites: www.acctm.org; www.nadn.org; www.accord3.com; and www.mediate.com

Dispute Prevention and Resolution

1003 Bishop Street, Suite 1155
Honolulu, HI 96813
Tel: 523-1234
Website: <http://www.dprhawaii.com/>

September 2024

Mediation Case Summaries

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

Dispute Prevention and Resolution, Inc.

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

Lou Chang

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

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Honolulu, HI 96814
Tel: (808) 521-6767
Fax: (808) 538-1454
Email: mcp@mediatehawaii.org

Maui

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

West Hawaii

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

East Hawaii

Ku'ikahi Mediation Center
101 Aupuni St. Ste. 1014 B-2
Hilo, HI 96720
Tel: (808) 935-7844
Fax: (808) 961-9727
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Kauai Economic Opportunity, Inc.
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Lihue, HI 96766
Tel: (808) 245-4077 Ext. 229 or 237
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Email: keo@keo-inc.org

Lou Chang, A Law Corporation

Mediator, Arbitrator, Attorney
Member, National Academy of Arbitrators
P.O. Box 61188, Honolulu, Hawaii 96839
Tel: (808) 384-2468
Email: louchang@hula.net
Website: www.louchang.com

Charles W. Crumpton

Crumpton Collaborative Solutions LLLC
Tel: (808) 439-8600
Email: crumpton@chjustice.com
Websites: www.acctm.org; www.nadn.org;
www.accord3.com; and www.mediate.com

Dispute Prevention and Resolution

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Honolulu, HI 96813
Tel: 523-1234
Website: <http://www.dprhawaii.com/>

June 2024

Mediation Case Summaries

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

Dispute Prevention and Resolution, Inc.

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

Mediation Center of the Pacific

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

Big Island Mediation Center

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

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1301 Young Street, 2nd Floor
Honolulu, HI 96814
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Fax: (808) 538-1454
Email: mcp@mediatehawaii.org

East Hawaii

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

Charles W. Crumpton

Crumpton Collaborative Solutions LLLC
Tel: (808) 439-8600
Email: crumpton@chjustice.com
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Fax: (808) 249-0905
Email: info@mauimeditation.org

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Kauai Economic Opportunity, Inc.
2804 Wehe Road
Lihue, HI 96766
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Fax: (808) 245-7476
Email: keo@keoinc.org

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Kamuela, HI 96743
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Email: info@whmediation.org

Lou Chang, A Law Corporation
Mediator, Arbitrator, Attorney
Member, National Academy of Arbitrators
P.O. Box 61188, Honolulu, Hawaii 96839
Tel: (808) 384-2468
Email: louchang@hula.net
Website: www.louchang.com

March, 2024

Mediation Case Summaries

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

Dispute Prevention and Resolution, Inc.

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

Mediation Center of the Pacific

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

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Tel: (808) 244-5744
Fax: (808) 249-0905
Email: info@maui-mediation.org

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Kamuela, HI 96743
Tel: (808) 885-5525 (Kamuela)
Tel: (808) 326-2666 (Kona)
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East Hawaii

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Member, National Academy of Arbitrators
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Email: crumpton@chjustice.com
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Honolulu, HI 96813
Tel: 523-1234
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December, 2023

Legislative Session 2024

The 2024 legislative session is coming soon with opening day on January 17, 2024. Like all legislative sessions, we're sure to see many proposed condominium bills seeking to change various aspects of development and governance of condominiums. We'll be sure to keep you updated in the next bulletin for condominium bills of interest.

Visit the Hawaii State Legislature website: (<http://www.capitol.hawaii.gov/>) for the legislative calendar, legislator contact information, citizen's guide to the legislative process, broadcasts of hearings, bill information, online bill testimony submission, and much more!

The Hawaii Legislature's website also includes an archive of Acts and bills from prior sessions (<https://www.capitol.hawaii.gov/advre-ports/main.aspx>). Users can research bills from prior legislative sessions, view their public testimony, committee reports, and various Senate and House drafts. This may be helpful in crafting legislation to address gaps in the current law or avoiding a similar fate to prior proposed bills that did not become law.

The Public Access room (<https://lrb.hawaii.gov/par>), located on the fourth floor of the Capitol building, serves to help Hawaii residents understand and participate in the legislative process.

The best time to work on new legislation is before the legislative session starts. Contact legislators in the interim between sessions to voice your concerns and see if they are willing to champion your proposed bill. There is only a short period of time for legislators to submit bills. Work with legislators to draft a bill, address concerns, and fine tune for submission during the first week of the legislative session.

Mediation Case Summaries

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

Dispute Prevention and Resolution, Inc.

Owner vs. AOOU	Dispute regarding changing the use of the common elements.	Mediated to agreement.
Owner vs. AOOU	Dispute regarding repairs to common areas.	Mediating parties agreed to continue with mediation and to pay mediator's fee privately.
Owner vs. AOOU	Issue of cable running through owners' unit and danger to disabled homeowner.	Arbitrated with agreement of all parties reached.
Owner vs. AOOU	Dispute regarding responsibility for water intrusion into owner's unit and resulting water damage.	Mediated; no agreement.
AOOU vs. Owner	Allegation of unit modifications by owner without prior required approval.	Mediated to agreement.
Owner vs. AOOU	Owner alleges improper maintenance of the property in violation of the bylaws.	Mediated to agreement.
Owner vs. AOOU	Allegation of violation of project documents regarding unit occupancy limits.	Mediated to agreement.
AOOU vs. Owner	Dispute regarding installation of a cell phone antenna near owners' unit.	Mediated to agreement.
Owner vs. AOOU	Issue of water intrusion into owner's unit and subsequent mold.	Mediated to agreement.
AOOU vs. Owner	Dispute regarding interpretation of project documents and whether pickleball is allowed on the tennis court.	Mediated; no agreement.
Owner vs. AOOU	Issue of responsibility to pay for damage from water leaks from owners' unit.	Mediated to agreement.

Mediation Case Summaries (cont. from page 5)

Owner vs. AOOU	Issue of zoning application made by the association and whether the application was in compliance with the project's declaration.	Mediated; no agreement.
Owner vs. AOOU	Issue of 1) whether the association can replace locks on doors without owners' consent and 2) whether project bylaws were legally amended.	Mediated; no agreement.

Mediation Center of the Pacific

AOOU vs. Owner	Dispute over interpretation of house rules and common area restrictions, specifically the parking area.	Mediated to agreement.
Owner vs. AOOU	Dispute regarding fees and penalties pursuant to bylaws and house rules. Unable to schedule mediation with the parties; case closed.	
Owner vs. AOOU	Dispute over common area and loading zone. Owner subsequently withdrew request for mediation.	
Owner vs. AOOU	Dispute regarding water damage to owner's unit.	Mediated; no agreement.
AOOU vs. Owner	Dispute over alleged failure of owner to obtain mandatory insurance coverage.	Mediated; no agreement.

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 Email: keo@keoinc.org

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 1003 Bishop Street, Suite 1155
 Honolulu, HI 96813
 Tel: 523-1234
 Website: <http://www.dprhawaii.com/>

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

Lou Chang, A Law Corporation
 Mediator, Arbitrator, Attorney
 Member, National Academy of Arbitrators
 P.O. Box 61188, Honolulu, Hawaii 96839
 Tel: (808) 384-2468
 Email: louchang@hula.net
 Website: www.louchang.com

September 2023 issue

Mediation Case Summaries

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

Dispute Prevention and Resolution, Inc.

Owner vs. AOUO	Dispute regarding changing the use of the common elements	Mediated to agreement.
Owner vs. AOUO	Owner alleged selective enforcement of rules by the condo board and harassment of owners.	Mediated to agreement.
Owner vs. AOUO	Dispute over interpretation of provision in the declaration; challenge to this provision by some owners.	Mediated; no agreement.
Owner vs. AOUO	Dispute regarding the cost of common elements as shared among the owners. Participants mediated and have decided to proceed to arbitration.	
Owner vs. AOUO	Allegation of inconsistent enforcement of house rule violations among owners.	Mediated; no agreement.
Owner vs. AOUO	Owners allege lack of any response by AOUO to dog attack and resultant injury to owners. Owners also allege AOUO using unlicensed contractors to repair water leaks into their unit.	Mediated to agreement.

West Hawai'i Mediation Center

Owner vs. AOUO	Owner disputed fines incurred against her and requested mediation.	Mediated; no agreement.
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Lou Chang, A Law Corporation

Owner vs. AOUO	Dispute over board policies, board actions, and repair of plumbing damages. Evaluative assessments provided the participants.	Mediated; no agreement.
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To consult with any of our subsidized private mediation services, contact one of the following providers:

Oahu

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

East Hawaii

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

Charles W. Crumpton

Crumpton Collaborative Solutions LLLC
Tel: (808) 439-8600
Email: crumpton@chjustice.com
Websites: www.acctm.org; www.nadn.org;
www.accord3.com; and www.mediate.com

Maui

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

Kauai

Kauai Economic Opportunity, Inc.
2804 Wehe Road
Lihue, HI 96766
Tel: (808) 245-4077 Ext. 229 or 237
Fax: (808) 245-7476
Email: keo@keoinc.org

Dispute Prevention and Resolution

1003 Bishop Street, Suite 1155
Honolulu, HI 96813
Tel: 523-1234
Website: <http://www.dprhawaii.com/>

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65-1291 Kawaihae Road, #103B
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Email: louchang@hula.net
Website: www.louchang.com

June 2023 issue

Mediation Case Summaries

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

Dispute Prevention and Resolution, Inc.

Owner vs. AOUC	Dispute over the collection of delinquent main tenance fees as allowed by the bylaws.	Mediation; no agreement.
AOUC vs. Owner	Dispute over removal of in-unit appliances.	Mediated to agreement.
Owner vs. AOUC	Owner alleged AOUC breached its fiduciary duty to owner. Parties mediated and exchanged settlement offers.	
AOUC vs. Owner	AOUC alleged owners installed AC unit in violation of bylaws.	Mediated to agreement.
Owner vs. AOUC	Owner alleged accusations of making changes to his unit in prohibition of bylaws were false and hurt his reputation.	Mediated; no agreement
Owner vs. AOUC	Dispute over payment for injuries received in the common area.	Mediated to agreement.
AOUC vs. Owner	Issue regarding AOUCs denial of owner's request to pay off share of owners' loan amount after deadline to pay had passed.	Mediated; no agreement.
Owner vs. AOUC	Dispute involving sewage leak into owner's unit and responsibility for repairs and expenses.	Mediated to agreement.
AOUC vs. Owner	Alleged violation of noise provisions in declaration and bylaws by owner to the disturbance of surrounding unit owners. Mediation resulted in no agreement as such, but the parties agreeing to noise testing guidelines.	

Mediation Center of the Pacific, Inc.

Owner vs. AOUC	Owner alleged property manager and board were ignoring house rule and bylaw violations.	Unable to schedule mediation. Case closed.
Owner vs. AOUC	Owner alleged violation of bylaws in board and property manager not providing notice of board meetings. Owner withdrew request for mediation after discussion with parties and settling dispute.	
Owner vs. AOUC	Owner alleged board not following bylaws in determining dollar amount for damages to owner's unit. Owner subsequently withdrew request for mediation with MCP; said it would use another mediation provider.	
Owner vs. AOUC	Owner alleged violation of the bylaws regarding the discussion of the association's budget at meetings. Parties did not agree to meet for mediation.	

Mediation Case Summaries

June 2023 issue

Lou Chang, A Law Corporation

Owner vs. AOOU

Issues involved allegations of improper association management, improper use of funds and alleged discrimination against owner. After mediating, several issues were resolved, but no overall agreement reached. Evaluative assessment was provided to the owner.

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

Oahu

Mediation Center of the Pacific, Inc.
245 N. Kukui Street, #206
Honolulu, HI 96817
Tel: (808) 521-6767
Fax: (808) 538-1454
Email: mcp@mediatehawaii.org

Maui

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

West Hawaii

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

East Hawaii

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

Kauai

Kauai Economic Opportunity, Inc.
2804 Wehe Road
Lihue, HI 96766
Tel: (808) 245-4077 Ext. 229 or 237
Fax: (808) 245-7476
Email: keo@keo-inc.org

Charles W. Crumpton

Crumpton Collaborative Solutions LLLC
TOPA Financial Center, Suite 702
745 Fort Street, Honolulu, Hawaii 96813
Tel: (808) 439-8600
Email: crumpton@chjustice.com
Websites: www.acctm.org; www.nadn.org;
www.accord3.com; and www.mediate.com

Dispute Prevention and Resolution

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THE AKAMAI BUYER

What to Consider Before You Buy a Condo

Before you make the leap and purchase a condominium unit, check to see whether pets are allowed. If your family unit includes a pet or pets, you'll need this information. Check the bylaws of the association and the house rules for any prohibitions on keeping pets. For example, while pets may be allowed, size and number restrictions are common in associations that allow pets. Is your pet too large? Do you have more than the accepted number of pets?

Also, is smoking allowed in the building in the open common areas? Is smoking allowed in the individual units? Do you have a health condition where it's important to avoid secondhand smoke? Disputes over secondhand smoke are common. Check the bylaws and house rules for any smoking prohibitions. Even if smoking is allowed in individual units only, in some buildings secondhand smoke seeps through to adjacent units.

Knowledge and information are the best tools that a potential buyer can have.



March 2023 issue

Mediation Case Summaries

From December 2022, through February 2023, the following condominium mediations or arbitrations were conducted pursuant to Hawai'i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations through the District Courts while mediation providers conducted community outreach in their respective communities.

Dispute Prevention and Resolution, Inc.

Owner vs. AOOU	Dispute regarding noise between upstairs and downstairs unit owners and the installation of flooring. Dispute between owners settled; one owner working on remaining issues with AOOU regarding house rules enforcement.	
AOOU vs. Owner	Issues involved delinquent maintenance fees and resulting attorney's fees pursuant to the project documents.	Mediated; no agreement.
AOOU vs. Owner	AOOU alleges modifications made to owner's unit in violation of project documents.	Mediated; no agreement.
Owner vs. AOOU	Owner blamed AOOU and two other unit owners for negative health effects from noxious odors coming from owners' units, in violation of project documents.	Mediated; no agreement.
Owner vs. AOOU	Owner challenged board's decision to begin a construction project and obtain construction loan.	Mediated; no agreement.
Owner vs. AOOU	Owners allege unfair treatment by board to owners not in the association rental pool in violation of declaration and bylaws. Parties have agreed to participate in arbitration after mediation.	Mediated; no agreement.
Owner vs. AOOU	Dispute alleging violation of project documents relating to noise levels at a commercial venue on association property.	Mediated to agreement.
AOOU vs. Owner	Alleged violations of smoking and noise rules by owners.	Mediated; no agreement.
Owner vs. AOOU	Dispute regarding water intrusion into the unit and subsequent mold damage.	Mediated; no agreement.
Owner vs. AOOU	Owners allege meeting mismanagement, lack of reasonable accommodation for owners and removal of water hose on common element property.	Mediated; no agreement.
Owner vs. AOOU	Owners dispute construction projects and resulting assessments.	Mediated; no agreement.
Owner vs. AOOU	Owner alleged improper amendment of declaration regarding lanai enclosures.	Mediated; no agreement.
Owner vs. AOOU	Association asserted that the newly installed water heater was not in compliance with the bylaws.	Mediated; no agreement.
Owner vs. AOOU	Owners allege modifications were made to the common elements in contravention of the declaration.	Mediated; no agreement.

EXHIBIT B

Lila Mower

August 29, 2024

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

Regarding: **MEDIATION BIAS**

Aloha Mr. Fujitani,

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

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

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

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

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

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

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

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

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

Lila Mower

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

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

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

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

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

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

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

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

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

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

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

Lila Mower

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

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

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

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

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

Mahalo to your attention to this very disconcerting matter.

Aloha,

/s/

Lila Mower

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

SB-146-HD-1

Submitted on: 3/31/2025 2:03:21 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jane Finstrom	Individual	Oppose	Written Testimony Only

Comments:

TESTIMONY IN OPPOSITION TO SB146 SD1 HD1

Committee on Judiciary & Hawaiian Affairs

Chair Rep. David A. Tarnas, Vice Chair Rep. Mahina Poepoe, and Honorable Members:

Aloha,

My name is **Jane Finstrom**, and I am a long-time condominium owner at a property in **Makaha**. I'm writing today with serious concerns about **SB146 SD1 HD1**, a bill that—despite its title—**does not protect homeowners like me**. In fact, it makes it far riskier for anyone without deep pockets to hold their association accountable or even ask questions without fear of financial retaliation.

I'm a retired resident on a fixed income. Like many others in my community, I do **not have access to attorneys, reserve funds, or legal insurance**, and I certainly cannot afford the risk of paying tens of thousands of dollars in legal fees just for asserting my rights. **Associations often have access to all of that—and then some**. That's why the original language in **HRS §514B-157** mattered. It gave us an important safeguard: if we made a good-faith attempt to mediate a dispute and it still ended up in court, **we wouldn't be crushed by the association's legal fees if we lost**.

SB146 HD1 removes that protection completely.

If this bill becomes law, it means that **even when owners try to do the right thing**, they could be financially destroyed just for losing a case. Mediation becomes meaningless if the outcome is still “pay up or else.” It **discourages resolution** and replaces it with fear.

This bill is not about reform. It's about control.

It's hard not to notice the fingerprints of industry professionals all over bills like this. **They write laws that protect their business models—not the people living in the buildings**. Homeowners need real help, not more legal traps disguised as progress.

What would real reform look like?

- A **state-level, AOA-funded office** to help mediate disputes fairly and provide education to both boards and owners.
- **Protections for people who try to resolve problems before they escalate**—not punishment.
- And most of all, **a seat at the table for real homeowners**, not just developers, lawyers, and management companies who profit off the imbalance.

I urge you: **don't make it harder for people like me to speak up**. We already feel outnumbered, outfunded, and unheard. **SB146 SD1 HD1 tilts the scale even further against us**, and I respectfully ask you to oppose it.

Mahalo for considering the voice of a real resident,

Jane Finstrom & Charles Schmidt

Condominium Owners

Makaha, Hawai'i

SB-146-HD-1

Submitted on: 3/31/2025 2:08:45 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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

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

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

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

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

The new Section 514B-B(b) found on page 4 of the bill provides that no attorneys' fees "with respect to a fine" shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable". This is somewhat ambiguous and could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation. To make it clear that the attorneys' fees referenced are attorneys' fees incurred in connection with the imposition of a fine, it is suggested that line 9-11 on page 4 of the bill be revised to read:

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

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

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

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

Respectfully submitted,

Julie Wassel

SB-146-HD-1

Submitted on: 3/31/2025 2:27:59 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Peter R Daspit	Individual	Oppose	Written Testimony Only

Comments:

Dear Friends, I am writing to express my strong opposition to SB146 SD1 HD1. If the intent is to take silently away our "Due Process" protections that condo advocates have fought so hard for, this does it - a true disservice and done in an underhanded way. Instead, why don't we work together to move forward and protect the little people, not the big lawyers and corporate developers. Why don't we get the condo industry out of the covert back-door condo bill rewriting process. Please protect the individual condo owners instead - the Legislature is the only thing big enough to stop the corporation steamroller from rolling condo owners all backwards into some kind of plantation system. Please help and vote no.

Aloha JHA Chair David Tarnas, Vice Chair Mahina Poepoe, and members.

1. I am making time to submit ‘testimony’ (opinion, not under oath in a Courtroom) on SB146SD1HD1 in OPPOSITION to its passage, for the following basic reasons.

(A) As ‘normal’, it does not indicate who requested/ authored it.

(B) Cleverly worded with vague phrases its implementation would gut ‘due process’ protections which had been made ‘law’ via LY2018 Act 195, which is its true purpose.

(C) The author did not reveal any conflict of interest, such as, being a lawyer for the spectrum of ‘Management Mafia’ companies who would profit from it taking away consumer protections.

(D) The author has failed to reveal how many state politicians have received donations from him over the past several years (perhaps 20 or more).

2. Our state, in its decades long piecemeal approach to adding multiple layers of anti-consumer and anti-taxpayer ‘rules’ to HRS514a and HRS514b has created a durable ‘Bully Authorization Act’ as it gives unfettered power to Boards of Directors, BUT does not impose any accountability on Board of Directors members.

3. As Home Owners Associations house perhaps 40% of our populations now, and the state makes ZERO effort to inform the public about anti-consumer anti-voting-rights Bills, passing these into state law only makes the lawyers happy.

***Sincerely, Dale A. Head (Sunnymakaha@yahoo.com)
Monday 31 March 2025***

PS - Why is it when Committee Chairs oppose unfettered voting rights bills for HOA members, no person on that Committee speaks up for the public?



SB-146-HD-1

Submitted on: 3/31/2025 4:04:20 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lorraine Leslie	Individual	Oppose	Written Testimony Only

Comments:

OPPOSE SB146 SD1 HD1 because it rescinds an important HRS 514B-157 protection for Hawaii citizen condo owners who pursue legitimate claims against developer, and other, big-money interests.

SB-146-HD-1

Submitted on: 3/31/2025 4:07:52 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

I oppose this bill

SB-146-HD-1

Submitted on: 3/31/2025 5:27:13 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Margaret Murchie	Individual	Oppose	Written Testimony Only

Comments:

I am sure that this bill was well intentioned but is not realistically in favor of homeowners. With required inspections and reports to be delivered, who have the lion's share of proof before they can proceed even with serious defective issues. . Time consuming Mediation rarely works expeditiously and fails more times than it works with contractors having to approve inspections . Two of my sisters are successful professional mediators but the homeowner should not have to pay all costs if they fail to come to an agreement. There are multiple defective material issues coming to light even with the newer buildings. If this bill is approved, it will likely have serious unintended consequences.

SB-146-HD-1

Submitted on: 3/31/2025 8:07:11 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Testimony in Strong Support of Amendments to SB146 SD1 HD1**Aloha e Honorable Committee Chairs and Committee Members,**

My name is Miri Yi, and I am a condominium owner submitting testimony on draft SB146 SD1 HD1. While this measure takes steps toward improving alternative dispute resolution for condominium-related issues, it falls critically short in addressing fundamental protections for homeowners. Without significant amendments, this bill risks reinforcing systemic abuses rather than remedying them. I respectfully urge you to revise the bill to include the following essential protections:

1. Prevention of Retaliatory and Unequal Enforcement

- Homeowners frequently experience selective enforcement of rules, retaliatory violations, and intimidation tactics when they exercise their rights—whether by requesting financial documents, running for board positions, or engaging in protected activities.
- The bill must mandate **equal enforcement** of association rules to prevent discrimination and abuse.

2. Limitations on Attorney's Fees and Late Fees

- Attorney's fees and late fees often **exceed the original fine or assessment**, pushing homeowners into severe financial distress.
- Homeowners must be protected from excessive fees that create an inescapable debt cycle. Associations exist to serve their members, not to exploit them financially or force the unjust loss of homes.

3. Protection of Homeowners' Rights

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

4. Clear and Reasonable Notice Requirements

- Homeowners must be provided **sufficient time** to correct alleged violations before fines are imposed.
- Violations and fines must be **fully documented** and made readily accessible to members.
- A minimum **30-day written notice** should be required for any fine, with homeowners having 30 days to dispute the charge.

5. Fair and Transparent Dispute Resolution Process

- Fines, late fees, and interest must **stop accruing** once a dispute is formally filed until it is resolved through a neutral party such as small claims court or a designated state agency.
- Homeowners must have the right to **appeal violations** at the next scheduled board meeting, with appeals prioritized on the agenda.
- Each **board member's vote on an appeal must be recorded and made publicly available**.
- No fines, fees, or attorney's fees should be imposed before an official resolution through legal channels.

6. Reasonable Limits on Attorney's Fees

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

7. Judicial Oversight Over HOA Boards

- Any disputed violation or fine must be **reviewed by small claims court or a state agency before enforcement** to ensure fairness.
- AOA/HOA Boards should not have unchecked authority to act as both prosecutor and judge in disputes where they have a direct interest.

8. Transparency and Access to HOA Records

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

By integrating these safeguards, **SB146 SD1 HD1 can truly protect homeowners from financial exploitation, unjust penalties, and retaliatory actions by their associations**. Without these amendments, homeowners will remain vulnerable to unchecked HOA board authority, leading to continued abuse and inequity. I strongly urge you to revise and pass this bill with these critical protections.

Mahalo for your time and consideration.

Very Sincerely,

Miri Yi

Homeowner Honolulu 96818

SB-146-HD-1

Submitted on: 3/31/2025 8:28:28 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

I supported this Bill in its 3 previous Committees. However, the amendments that the previous Committee made means that it is very obvious that I must **STRONGLY OPPOSE** this Bill in its current form. As one example, the requirement that attorney fees must be paid on demand is a massive step back of one of the best reforms that condo governance has had in the past 5 years.

I have been involved in 2 retaliatory lawsuits with my Association, neither of which my Association won. However, I spent over \$130,000 for my own attorney fees over a period of 5 years. This was significantly more money than I had myself. If I would have been forced to pay the Association's attorney fees on demand, I would have no money left for my own attorneys and I would have lost both lawsuits, even though the Association's Complaints against me were without merit.

I beg this Committee, the Judiciary Committee, to follow well-established legal protocols and not demand payment of attorney fees until judgement by a Court. This is even more important since 100% of condominium attorney fees are reimbursable instead of the normal 25%.

There are numerous other significant CPC amendments that have caused this Bill to go backwards and invalidate the testimony of testifiers from the previous Committees.

For these reasons, I request that this Bill be deferred and worked on more next Session.

Thank you for the opportunity to provide testimony,

Jeff Sadino

JSadino@gmail.com

SB-146-HD-1

Submitted on: 4/1/2025 1:13:49 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mahealani Perkins	Individual	Oppose	Written Testimony Only

Comments:

Oppose, Oppose, Oppose!!!!

SB-146-HD-1

Submitted on: 4/1/2025 8:55:04 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

Committee on Judiciary & Hawaiian Affairs

Chair Rep. David A. Tarnas, Vice Chair Rep. Mahina Poepoe, and Honorable Members of the Committee:

Aloha,

We, the undersigned residents and condominium owners at Makaha Surfside, submit this testimony in strong opposition to SB146 SD1 HD1. Each of us has experienced or witnessed firsthand the harmful imbalance of power that exists between owners and associations—and we are deeply concerned that this bill will further erode the few protections homeowners currently have.

SB146 HD1 **repeals HRS §514B-157**, a law that protects owners from being forced to pay the legal fees of their association if they make a good-faith attempt to resolve disputes through mediation. **Removing this protection is unjust and dangerous**, especially for owners who cannot afford legal representation or the risk of losing everything just for asserting their rights.

Hawaii’s condominium owners come from **diverse backgrounds**—teachers, veterans, retirees, service workers, young families, and long-time residents alike. Many live on **fixed incomes**, **have limited access to legal resources**, and do not share the same socioeconomic advantages as those crafting the laws that govern their homes. Yet **SB146 HD1 increases the legal and financial risks placed on these individuals**, while giving more power and protection to associations and management companies. This deepens an already harmful imbalance and ignores the reality that many owners are simply trying to protect their homes, not navigate a system stacked against them. If fairness is the goal, this bill takes us further from it.

We do **not** have access to attorneys, insurance policies, or surplus association funds like the AOA does. Yet under this bill, if we raise a legitimate concern and do not prevail in court, we could be punished with crushing legal fees—**even if we tried to mediate in good faith**.

This is not due process. **This is a weaponization of the legal system to silence owners.**

Hawai‘i Doesn’t Need More Laws Written by Industry Insiders.

We call upon the Legislature to reject SB146 SD1 HD1 and instead focus on **genuine, owner-centered reform**, including:



A **state-run, AOA-funded HOA Office** to handle disputes, educate homeowners, and hold boards accountable.



Real protections for owners who act in good faith to resolve issues before turning to the courts.



A **citizen-led task force** made up of people who have lived through mismanagement—not the lawyers and companies who profit from it.

This bill does not promote fairness. It promotes fear. And it will have a chilling effect on every owner who dares to speak up for their rights.

We urge you to vote NO on SB146 SD1 HD1 and to take meaningful steps toward reform that puts people—not industry profits—at the center of condominium governance in Hawai‘i.

Respectfully submitted,

(in alphabetical order)

Pamela Cleere

Realtor & Makaha Surfside On-Site Resident

Kirick Kelly

Disabled Veteran, Owner & On-Site Resident

Michelle Kerklo

Former Makaha Surfside Board Member & On-Site Resident

William Lazu

Former Makaha Surfside Board Member & On-Site Resident

Jeff Lintz

Retired Congressional Aide, Makaha Surfside Owner

Lou Salter

Retired Public School Teacher, Makaha Surfside Owner

Paula-Marie Weigand

Makaha Surfside Owner & On-Site Resident

Patric & Kaye Yap

Makaha Surfside Owner & On-Site Resident

*While only the above signed this letter, we represent a larger group of **approximately 40+ Hawai'i condo owners** who have united in support of restoring fairness to our condo laws. Some were unable to respond in time, and we are careful not to attach names to testimony without their express approval.

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

I OPPOSE S.B. No. 146 SD1, HD1 (“SB 146”) in its current form..

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

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

The new Section 514B-B(b) found on page 4 of the bill provides that no attorneys’ fees “with respect to a fine” shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be “collectable”. This could be construed as prohibiting an association from recovering attorneys’ fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. A board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys’ fees incurred by the association in connection with the violation. To make it clear that the attorneys’ fees referenced are attorneys’ fees incurred in connection with the imposition of a fine, it is suggested that line 9-11 on page 4 of the bill be revised to read:

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

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

collectible, please consider adding the following sentence to the new subsection (c) found on page 4, lines 12-14:

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

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

Respectfully submitted,

Pamela J. Schell

SB-146-HD-1

Submitted on: 4/1/2025 11:30:56 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

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

Comments:

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

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

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

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

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

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

The new Section 514B-B(b) found on page 4 of the bill provides that no attorneys' fees "with respect to a fine" shall be charged by an association against any unit owner or tenant before the time when a fine is deemed to be "collectable". This is somewhat ambiguous and could be construed as prohibiting an association from recovering attorneys' fees incurred by it in having its lawyer send a demand letter to an owner who has violated a covenant if a fine resulting from the violation is later waived, rescinded, or set aside. The fact that a fine has been waived, rescinded, or set aside does not necessarily mean that there was no violation warranting the sending of a demand letter. It may be that the board agreed to waive or rescind the fine as a gesture of goodwill or that the fine was set aside by the small claims court for technical reasons. Furthermore, a board may be less inclined to waive fines upon appeal if doing so means that it must also waive all attorneys' fees incurred by the association in connection with the violation. To make it clear that the attorneys' fees referenced are attorneys' fees incurred in connection with the imposition of a fine, it is suggested that line 9-11 on page 4 of the bill be revised to read:

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

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

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

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

Respectfully submitted,

Paul A. Ireland Koftnow

SB-146-HD-1

Submitted on: 4/1/2025 1:17:34 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Evan De Los Santos	Individual	Oppose	Remotely Via Zoom

Comments:

I oppose SB146 SD1, as a homeowner who has no other option to purchase a home outside of HOA control, I have been forced to sit and watch as people in power continue stripping away rights I have as regards our own governance around our property, deal with corruption inside the HOAs and management associations which continues driving HOA fees up and up without any increase in the commitment to maintenance or quality of amenities. I want the right to dispute injustice as I see fit without being denied action due to court proceeding and legal fees I cannot manage. Corruption like this in the government is among the biggest reasons cost of living is so high here, and I'm sick and tired of it.

SB-146-HD-1

Submitted on: 4/1/2025 1:36:26 PM

Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Allison Pettersson	Individual	Oppose	Written Testimony Only

Comments:

I am writing to vehemently OPPOSE SB146 SD1 HD1 because it rescinds an important HRS 514B-157 protection for Hawaii citizen condo owners who pursue legitimate claims against developer, and other, big-money interests.

It is time for Hawaii public officials to represent and protect the citizens that voted for them, not just big business.