

JANE SUGIMURA  
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Honolulu, Hawaii 96813  
Tel: 524-0544 Fax: 521-7739

March 18, 2012

Rep. Ryan I. Yamane, Chair  
Rep. Dee Morikawa, Vice-Chair  
House Committee on Health

Re: Testimony in Support of SB 2295 SD1, Re Condominiums  
Hearing: Tues., March 20, 2012, 9 a.m. Conf. Rm. #329

Chair Yamane and Vice-Chair Morikawa and Members of the Committee:

My name is Jane Sugimura. I am the President of the Hawaii Council of Associations of Apartment Owners (HCAAO) and I am a practicing attorney in Honolulu, Hawaii and am a partner in the firm of Bendet Fidell, AAL, ALC. I have been active in getting legislation enacted in HRS 514A and 514B to support condominium residents who want to age in place.

Condominium owners are getting older and wish to age in place and in order to do that some condominiums are providing assistance to their seniors and there are non-profits and for-profit companies that are offering services to senior citizens who live in condominiums or apartment buildings so that they can age in place. Such services and programs benefit the State because it means that scarce resources will not have to be used to build nursing homes to care for Hawaii residents as they age.

Many existing condominiums are considering providing such services or allowing vendors to provide such services to their residents and a case in point is One Kalakaua, which is a condominium that became licensed as an assisted living facility. Most if not all of the residents in the building are over 60 years of age and most if not all of the residents are retired and many are on fixed incomes. Although most if not all of the unit owners have substantial assets, they are on fixed incomes and are concerned about expenses like increased maintenance fees that may deplete their resources. At One Kalakaua, concern had been expressed because the health care and personal services provided by

the assisted living facility is included in the maintenance fees, which are then allocated to all owners – and not just the ones who have contracted for those services.

As their resident population ages, more and more buildings are considering offering such services (i.e., “NORC”) and or inviting vendors to provide services to their aging residents.

In view of these changes, I believe that this bill is timely in that it attempts to codify an existing practice in the condominium industry where in a mixed-use project containing apartments for residential and commercial use, the costs and expenses related to the commercial use are allocated and assessed only to the owners of those units. Take for instance, the condo-hotel industry - the cost associated with the hotel rentals, e.g., housekeeping, front desk, valet services, etc., are allocated only to those unit owners who have placed their units in the rental pool. Any units that are owner occupied or used for residential purposes who do not use the “hotel” services are not charged for the “hotel” expenses and charges, including the administrative expenses of those operations and the compensation paid to employees engaged in providing those services.

I have heard from a resident of One Kalakaua, who objects to this bill because it will increase her cost for assisted living services that she receives. However, as a renter, that resident does not have to pay maintenance fees<sup>1</sup> that are assessed only to unit owners, many of whom are able bodied and do not yet have a need for such services, but are being required to pay the additional amounts to operate the assisted living facility in the condominium and thereby subsidize the residents who actually receive those service.

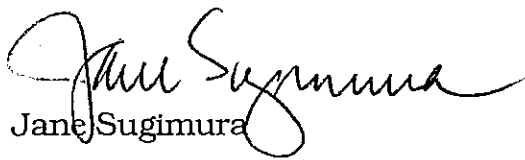
This bill is about clarifying the allocation of common expenses to unit owners in a condominium. It is not about whether assisted living services should or should not be provided to residents at condominiums, i.e., at One Kalakaua. I believe that it is almost unanimous that such services should be made

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<sup>1</sup> However, to the extent the renter’s monthly rent is set so as to cover the monthly maintenance fee payable by the unit owner, if this bill passes out, then the renter’s monthly rent will be reduced by the amounts allocated to pay for the health care and personal services expenses incurred to provide the assisted living services to some residents in that building.

available to all residents.<sup>2</sup> The issue is how to reasonably allocate the cost of such services so that those who use those services are the ones who pay for them and not to have the unit owners – all or most of whom are retired and are on fixed incomes and cannot afford to pay substantial annual increases to their maintenance fees as a result of having to subsidize these services.

Thank you for the opportunity to testify on this bill.

  
Jane Sugimura

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<sup>2</sup> When One Kalakaua first opened, assisted living services were provided by a vendor who leased and occupied space in the building and provided such services to resident on a contract basis and each resident who used the services were charged by the vendor for those services. Under that system, the costs of the assisted living services were paid to the vendor by the people who used the services and those costs were not included as part of the condominium maintenance fee as they have now become.

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON HEALTH**  
Rep. Ryan Yamane, Chair

RE: Senate Bill 2295, SD1: **RELATING TO CONDOMINIUMS**

My name is Francis Soon. I am a resident/owner and the President of the Association of Apartment Owners Board of Directors at One Kalakaua Senior Living.

This community is a Fee Simple condominium whose project declaration states that assistance with daily living be provided and that has been the case for almost 15 years. The Assisted Living Program (ALP) has survived attacks through the legislature and the courts made by one individual. It appears that the attacks are and were intended to undermine the infrastructure required to maintain a viable ALP.

It has been stated, by the proponents of this bill, that there is lack of resident understanding relating to the cost of maintaining the ALP at One Kalakaua. The petitions submitted for your observation indicate that each signee understands that:

- a) all personal (hands on) services are charged to the resident receiving them,
- b) all assessments for those personal care services are charged to the resident receiving them and
- c) all of us share in the support of the infrastructure to ensure that those services are available if and when anyone needs them.

It appears that participating in and supporting the programs and amenities common to senior living facilities is objectionable to some people. Indeed, we have had some residents who have moved on because they either did not like the life-style or could not afford the fees. We would like to believe that by moving on they were able to remain safe and maintain their desired quality of life.

I am concerned that by passing this bill:

- the ALP at One Kalakaua will have funding issues
- the cost of the services to the 80 residents in the ALP will increase greatly
- the services will not be readily available to the rest of us when we need them
- One Kalakaua will cease to exist as we know it and the residents needing care and services will be placed in a compromised situation.

I would like you to consider the fact that the average age of the residents at One Kalakaua is ninety (90). Most of those residents have families who are engaged in their care and finances. If the families are concerned about the cost and allocation of the services they would certainly be speaking up.

**I STRONGLY URGE THE COMMITTEE TO VOTE AGAINST THIS BILL.**

*Francis H. Soon*

March 18, 2012

Testimony for Hearing before the  
Committee on Health  
House of Representatives  
State of Hawaii

Tuesday, March 20, 2012, 9:00 am  
Conference Room 329  
Hawaii State Capitol

Re: Opposition to SB 2295 SD 1 Relating to Condominiums

Chair Yamane, Vice Chair Morikawa and Committee Members,

My name is Dee Robinson and I am currently the Executive Director for One Kalakaua Senior Living. I would like to take this opportunity to testify in strong opposition to SB 2295 SD1.

One Kalakaua Senior Living opened its doors in 1997 offering a full range of services geared specifically for seniors. One Kalakaua's governing documents established its purpose "to provide the means for the governance of the Project as a Senior Living Facility". One of the many services offered to its senior membership is assistance in daily living. The facility has been licensed by the State as an Assisted Living Facility since 2002.

Because of One Kalakaua's unique structure, we are able to offer personal care services, in 15 minute increments, to those residents that need/request for these services, on a not for profit basis, that allows residents to age in place at substantially lower costs than other Assisted Living Facilities with similar services are able to offer.

Fees for these personal care services have always been charged directly to those residents that actually need/request them. The Resident Handbook clearly discloses the additional costs for these services and that they are ala carte charges to be assessed only to those residents using them. Separate accounts are kept for these charges and these processes are reviewed annually by a CPA.

One Kalakaua maintains a good reputation in the community providing quality of care in an independent home environment. The vast majority of residents and family members are very happy with One Kalakaua's program, and bought/moved into One Kalakaua for the program and amenities that are being offered and were disclosed to them prior to purchasing/moving in.

The only negative experiences surrounding One Kalakaua stems from one proponent of the bill. This proponent has a business interest in the project and was a member of the Developer's Sales Team. She is a real estate broker and over the past several years has continued to market and sell units in One Kalakaua to elderly new residents in spite of her criticisms and complaints about One Kalakaua. In fact, on the proponent's current website, it clearly states that additional amenities and services are available for a fee if you should ever need them. It lists several personal care services, so it appears that this proponent is well aware that these services are charged only to those residents requiring the services. Why do we need legislative action for a problem that doesn't exist?

This proponent has a long history of pursuing similar issues as addressed in the bill at many different levels (mediation, DCCA, legislature, litigation). This constant rehashing of the same issues has been disruptive in our otherwise peaceful and happy community, and it has caused a tremendous amount of stress to our elderly resident population (currently at an average age of 90), with great financial burdens from special assessments imposed to cover legal fees. These attacks have cost the Association and its Insurance Companies over 1 million dollars.

Because One Kalakaua is the only condominium licensed as an Assisted Living Facility, no other such facility exists. We are very concerned that the intent of the proposed bill is to launch another attack against One Kalakaua, or to re-litigate issues that have already been settled in court, and not to improve the language of the law. Another such attack would cause undue anxiety and emotional stress to our senior residents, as well as severe financial burden.

Please vote against this bill.

A handwritten signature in black ink, consisting of a stylized initial 'D' followed by a long, sweeping horizontal line that tapers to the right.

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State of Hawaii

Tuesday, March 20, 2012, 9:00 am  
Conference Room 329  
Hawaii State Capitol

Re: Opposition to SB 2295 SD 1 Relating to Condominiums

Chair Yamane, Vice Chair Morikawa and Committee Members,

Please find attached our signed Petition in Strong Opposition to SB 2295 SD1.

Sincerely,  
136 Residents of One Kalakaua Senior Living

**PETITION IN STRONG OPPOSITION TO**  
**SB 2295 SD1**

**BY THE RESIDENTS OF**  
**ONE KALAKAUA SENIOR LIVING**

SUBMITTED ON MARCH 20, 2012 TO  
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 HOUSE OF REPRESENTATIVES  
 STATE OF HAWAII

By signing my name on this petition, I confirm the fact that I am a resident of One Kalakaua Senior Living, located at 1314 Kalakaua Avenue. I am living at this senior living facility because I wish to "age in place" and to receive support services that will help me do that. I confirm that the services required to assist me with the activities of daily living currently are being charged to me only when I use them. I am aware that my needs will be assessed so that I can receive the services required to maintain a safe and healthy existence and that those assessments will be charged to me. I understand that I share in the support of the infrastructure that is necessary to ensure that the services are readily available should I need them. I also object to the vagueness of SB 2295 SD1, which I am concerned will invite further unnecessary, repeated lawsuits after our community has been subjected to years of litigation and mediation, for which we have prevailed on similar issues, but which resulted in added expense and significant emotional stress to our aging community.

I respectfully request that you vote against passage of this bill.

<u>Name (Printed)</u>	<u>Signature</u>	<u>Name (Printed)</u>	<u>Signature</u>
Amy W. Pang	<i>Amy W. Pang</i>	SOON FRANK	<i>Soon Frank</i>
Shirley W.S. Chang	<i>Shirley W.S. Chang</i>	Alice Goldsmith	<i>Alice Goldsmith</i>
Dai Kiki Kenich	<i>Dai Kiki Kenich</i>	CHARLES M. KAGAWA	<i>Charles M. Kagawa</i>
Frances J. Hanata	<i>Frances J. Hanata</i>		
Anthony D.K. Ching	<i>Anthony D.K. Ching</i>		
Amy K.C. Ching	<i>Amy K.C. Ching</i>		
Joan Worthen	<i>Joan Worthen</i>		
RICAMAE W. WILLIAMS	<i>Ricamae W. Williams</i>		
Leilani Pyle	<i>Leilani Pyle</i>		
George Nishimura	<i>George Nishimura</i>		



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<u>Name (Printed)</u>	<u>Signature</u>	<u>Name (Printed)</u>	<u>Signature</u>
Francis C.H. Lum	<i>Francis C.H. Lum</i>		
Bertha Y. Lum	<i>Bertha Y. Lum</i>		
Mabel KAM	<i>Mabel Kam</i>		
JUNE TAKEMOTO	<i>June Takemoto</i>		
YOUNG FUNGBOY	<i>Young Fun Boy</i>		
NANCY WALKER	<i>Nancy Walker</i>		
Xitazel Wada	<i>Xitazel Wada</i>		
MARY CECCARELLI	<i>Mary Ceccarelli</i>		
PIERSHING LIN	<i>Piershing Lin</i>		

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<u>Name (Printed)</u>	<u>Signature</u>	<u>Name (Printed)</u>	<u>Signature</u>
NANCY S. FUJIMOTO	<i>Nancy S. Fujimoto</i>		
KAMEO FUJIMOTO	<i>Kameo Fujimoto</i>		
Hatsuko Kaneskire	<i>Hatsuko Kaneskire</i>		
Lula Park	<i>Lula Park</i>		
OLIVIA AU	<i>Olivia Au</i>		
CLARA AMUNDSEN	<i>Clara Amundsen</i>		
WILLIAM J LAMKE	<i>William J Lamke</i>		
Mikiko Kawamura	<i>Mikiko Kawamura</i>		

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<u>Name (Printed)</u>	<u>Signature</u>	<u>Name (Printed)</u>	<u>Signature</u>
LLOYD NAMIKIHA	Lloyd Namikihira		
HELEN YAMAGUCHI	Helen Yamaguchi		
CARRIE DRNG	Carrie Drng		
Hazel Amen	Hazel Amen		
R. J. SPANGLER	R. J. Spangler		
Isobel J. Spangler	Isobel Spangler		
Dot Cote	Dot Cote		
STANLEY LEU	Stanley Leu		
Helen Chum-thorn	Helen Chum-thorn		

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<u>Name (Printed)</u>	<u>Signature</u>	<u>Name (Printed)</u>	<u>Signature</u>
LYDIA LEN	<i>Lydia Len</i>		
HARRNA WONG	<i>Harrna Wong</i>		
JORIS CHAN	<i>Joris Chan</i>		
AILENE HILYARD	<i>Ailene Hilyard</i>		
BERNADETTE NAKAMATA	<i>Bernadette Nakamata</i>		
EDITH FUJIKAWA	<i>Edith Fujikawa</i>		
ASAKO BRUMMITT	<i>Asako Brummitt</i>		
CLARA VIFIRA	<i>Clara Vifira</i>		
MILDRED CHAN	<i>Mildred Chan</i>		

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	<u>Name (Printed)</u>	<u>Signature</u>	<u>Name (Printed)</u>	<u>Signature</u>
Rm.	EDITH SUGANO	<i>Edith Sugano</i>	MARK LORENZEN	<i>Mark Lorenzen</i>
	SARAH KIM	<i>Sarah Kim</i>		
	Irene Kadounh	<i>Irene Kadounh</i>	IRENE KADOUNH	
	Kim Yee	<i>Kim Yee</i>		
1405	Roberta Chang	<i>Roberta Chang</i>		
	Fred Chang	<i>Fred Chang</i>		
1214	Annataam	<i>Annataam</i>		
	Y. P. PANG	<i>Y. P. Pang</i>		
	Y. SAKAI	<i>Y. Sakai</i>		
	YURIKO SAKAI	<i>Yuriko Sakai</i>		



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<u>Name (Printed)</u>	<u>Signature</u>	<u>Name (Printed)</u>	<u>Signature</u>
CHARLES AMOR	<i>Charles Amor</i>		
Sally Vitullo	<i>Sally V. Vitullo</i>		
Harriet Takara	<i>Harriet H. Takara</i>		
HARRIET ROTZ	<i>Harriet Rotz</i>		
AMY Y. MEJUNG	<i>Amy Y. Mejung</i>		
ALICE T. HIRONASA	<i>Alice T. Hironasa</i>		





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*701	Joyce MASUDA	<i>Joyce Masuda</i>	Phyllis Stranske	<i>Phyllis Stranske</i>	*711
*702	Maseko Oda	<i>Maseko Oda</i>	HELEN KAU	<i>Helen Kau</i>	*712
*706	PAGER. DWORR	<i>Pager L. Dworrr</i>	WIE CHING	<i>Lillie Ching</i>	*706
"	CHARLES DWORR	<i>Charles Dworrr</i>	KATHLEEN McLaughlin	<i>Kathleen McLaughlin</i>	*714
*705	Patsy Uchimura	<i>Patsy Uchimura</i>	Gladys HELBUSH	<i>Gladys Helbush</i>	*707
*703	Betty Kagami	<i>Betty Kagami</i>			
*704	GENGO MATSUKAWA	<i>Genjo Matsukawa</i>			
*708	Tetsui Watanabe	<i>Tetsui Watanabe</i>			
*714	MARY KOSA SA	<i>Mary Kosa</i>			
*711	Jane Nemura	<i>Jane Nemura</i>			

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<u>Name (Printed)</u>	<u>Signature</u>	<u>Name (Printed)</u>	<u>Signature</u>
MARY YAMAKAUA	Mary Yamakaua	SALLY EDWARDS	Sally Edwards
ALBERT YAMAKAUA	Albert Yamakaua	Lydia Iwanuma	Lydia Iwanuma
Mabel Chang	Mabel Chang	TSUNEO YASUKAWA	Tsunao Yasukawa
Virgil Meeker	Virgil Meeker		
TOSHI NOHARA	T. Nohara		
Colleen Hirano	Colleen Hirano		
Hong An Ling	Hong An Ling		
Hong Shan Leong	Hong Shan Leong		
Jane Watabayashi	Jane Watabayashi		
HORI KAWA, Nancy	Nancy Hori Kawa		

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 HOUSE OF REPRESENTATIVES  
 STATE OF HAWAII

By signing my name on this petition, I confirm the fact that I am a resident of One Kalakaua Senior Living, located at 1314 Kalakaua Avenue. I am living at this senior living facility because I wish to "age in place" and to receive support services that will help me do that. I confirm that the services required to assist me with the activities of daily living currently are being charged to me only when I use them. I am aware that my needs will be assessed so that I can receive the services required to maintain a safe and healthy existence and that those assessments will be charged to me. I understand that I share in the support of the infrastructure that is necessary to ensure that the services are readily available should I need them. I also object to the vagueness of SB 2295 SD1, which I am concerned will invite further unnecessary, repeated lawsuits after our community has been subjected to years of litigation and mediation, for which we have prevailed on similar issues, but which resulted in added expense and significant emotional stress to our aging community.

I respectfully request that you vote against passage of this bill.

<u>Name (Printed)</u>	<u>Signature</u>	<u>Name (Printed)</u>	<u>Signature</u>
Molly Simoian	<i>Molly Simoian</i>		
Helen Young	<i>Helen Young</i>		
Mildred Yasutake	<i>Mildred Yasutake</i>		
Susumu Yamada	<i>Susumu Yamada</i>		
Remedios Hartmann	<i>Remedios Hartmann</i>		
MARIE O. PELL	<i>Marie O. Pell</i>		
Ethel M. Miyahira	<i>Ethel M. Miyahira</i>		
Winifred W. Chuen	<i>Winifred W. Chuen</i>		

**PETITION IN STRONG OPPOSITION TO**  
**SB 2295 SD1**

**BY THE RESIDENTS OF**  
**ONE KALAKAUA SENIOR LIVING**

SUBMITTED ON MARCH 20, 2012 TO  
 THE COMMITTEE ON HEALTH  
 HOUSE OF REPRESENTATIVES  
 STATE OF HAWAII

By signing my name on this petition, I confirm the fact that I am a resident of One Kalakaua Senior Living, located at 1314 Kalakaua Avenue. I am living at this senior living facility because I wish to "age in place" and to receive support services that will help me do that. I confirm that the services required to assist me with the activities of daily living currently are being charged to me only when I use them. I am aware that my needs will be assessed so that I can receive the services required to maintain a safe and healthy existence and that those assessments will be charged to me. I understand that I share in the support of the infrastructure that is necessary to ensure that the services are readily available should I need them. I also object to the vagueness of SB 2295 SD1, which I am concerned will invite further unnecessary, repeated lawsuits after our community has been subjected to years of litigation and mediation, for which we have prevailed on similar issues, but which resulted in added expense and significant emotional stress to our aging community.

I respectfully request that you vote against passage of this bill.

<u>Name (Printed)</u>	<u>Signature</u>	<u>Name (Printed)</u>	<u>Signature</u>
Nora S. Uyeda	<i>Nora S. Uyeda</i>	Joan F White	<i>Joan F White</i>
<del>SARAH JANAKA</del>	<del><i>Sarah Janaka</i></del>	Nancy W. Wu	<i>Nancy W. Wu</i>
<del>ELLEN A. TANAKA</del>	<del><i>Ellen A. Tanaka</i></del>	JAMES HASEBE	<i>James Hasebe</i>
DOMS T. MOSE	<i>Doms T. Mose</i>	Hazel K. Oi	<i>Hazel K. Oi</i>
Carol A. Lyons	<i>Carol A. Lyons</i>		
Florence Y. Fujimori	<i>Florence Y. Fujimori</i>		
Edward M. Fujimori	<i>Edward M. Fujimori</i>		
MIRIAM DUNN	<i>Miriam Dunn</i>		
Kenneth Uyeda	<i>Kenneth Uyeda</i>		
VIVIAN NISHIMOTO	<i>Vivian Nishimoto</i>		



**JULIETTE K. TAURA  
1314 KALAKAUA AVE APT. 601  
HONOLULU, HAWAII 96826  
983-4501**

March 19, 2012

Hearing: Tuesday, 3/20/2012 9 a.m. House Conf. Rm. #329

RE: TESTIMONY IN SUPPORT OF SB 2295 SD1

TO THE HONORABLE RYAN YAMANE, CHAIR  
AND MEMBERS OF THE COMMITTEE

My name is Juliette K. Taura. I have lived in Apt. 601 at One Kalakaua since 1997.

I want to testify for SB 2295 SD1. I received a petition on March 17, 2012 which I was asked to sign. If SB 2295 SD1 is the legal clarification of what an Assisted Living Facility in a condominium is to be, I am in favor of such a bill.

If the bill is to clarify the status and operation of an Assisted Living Facility in a condominium, I do not understand why there is a petition being circulated against the bill.

The petition states, **"I understand that I am in the support of the infrastructure that is necessary to ensure that services are readily available should I need them."** The establishment of the Assisted Living Facility was never brought to a vote nor were there any discussion of the cost of supporting the infrastructure.

**ONE KALAKAUA SENIOR LIVING ASSOCIATION**

**SPECIAL ASSESSMENT SCHEDULE - EFFECTIVE April 1, 2012**

Unit Type	Qty	%	Monthly Increase Per Unit	Total Monthly Collections	Monthly Current Cost Per Unit	Monthly Proposed Cost Per Unit
01	11	0.65613%	7.21743% \$ 135.18	\$ 1,487.01	\$ 388.97	\$ 524.15
02	11	0.66090%	7.26990% \$ 136.17	\$ 1,497.82	\$ 391.79	\$ 527.96
03	11	0.59179%	6.50969% \$ 121.93	\$ 1,341.19	\$ 350.82	\$ 472.75
04	11	0.56319%	6.19509% \$ 116.03	\$ 1,276.37	\$ 333.87	\$ 449.90
05	12	0.55843%	6.70116% \$ 115.05	\$ 1,380.64	\$ 331.05	\$ 446.10
06	12	0.56796%	6.81552% \$ 117.02	\$ 1,404.20	\$ 336.70	\$ 453.71
07	12	0.61324%	7.35888% \$ 126.35	\$ 1,516.15	\$ 363.54	\$ 489.89
08	12	0.61244%	7.34928% \$ 126.18	\$ 1,514.17	\$ 363.07	\$ 489.25
09	12	0.45755%	5.49060% \$ 94.27	\$ 1,131.23	\$ 271.24	\$ 365.51
10	12	0.67996%	8.15952% \$ 140.09	\$ 1,681.11	\$ 403.09	\$ 543.19
11	12	0.68632%	8.23584% \$ 141.40	\$ 1,696.83	\$ 406.86	\$ 548.27
12	12	0.67520%	8.10240% \$ 139.11	\$ 1,669.34	\$ 400.27	\$ 539.38
13	12	0.73716%	8.84592% \$ 151.88	\$ 1,822.52	\$ 437.00	\$ 588.88
14	12	0.37891%	4.54692% \$ 78.07	\$ 936.80	\$ 224.63	\$ 302.69
1503	1	0.61006%	0.61006% \$ 125.69	\$ 125.69	\$ 361.66	\$ 487.35
1504	1	0.59179%	0.59179% \$ 121.93	\$ 121.93	\$ 350.82	\$ 472.75
	166	100.00000%		\$ 20,603.00		

**DONNA WONG**  
**1314 KALAKAUA AVE APT. 1112**  
**HONOLULU, HAWAII 96826**  
**983-4650**

March 19, 2012

Hearing: Tuesday, 3/20/2012 9 a.m. House Conf. Rm. #329

RE: TESTIMONY IN SUPPORT OF SB 2295 SD1

TO THE HONORABLE RYAN YAMANE, CHAIR  
AND THE MEMBERS OF THE COMMITTEE

My name is Donna Wong. I have lived in Apartment 1112 at One Kalakaua since it opened.

I want to testify for SB 2295 SD1 and support SB 2295 SD1 because this bill clarifies the rights of the condominium owner and states **"The purpose of this Act is to clarify that any and all expenses related to the operation of an assisted living facility in a condominium project, including but not limited to administrative expenses to operate the assisted living facility, compensation paid to employees, or vendors who provide assisted living services to residents in the condominium, shall be assessed against the unit owner only when the unit owner or resident of the unit owner elects to utilize such services."**

Thank you for allowing me to turn in my testimony in support of SB 2295 SD1.

*Donna C. Wong*

Donna Wong



## **morikawa2 - Grant**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 19, 2012 9:18 AM  
**To:** HLTtestimony  
**Cc:** hsap.lc@Gmail.com  
**Subject:** Testimony for SB2295 on 3/20/2012 9:00:00 AM

Testimony for HLT 3/20/2012 9:00:00 AM SB2295

Conference room: 329  
Testifier position: Oppose  
Testifier will be present: Yes  
Submitted by: Steve Glanstein  
Organization: Hawaii State Association of Parliamentarians  
E-mail: [hsap.lc@Gmail.com](mailto:hsap.lc@Gmail.com)  
Submitted on: 3/19/2012

**Comments:**

This bill originally was an electronic notification bill. It got completely changed to micromanage condominium associations that are designed for senior citizens. Previous bills that attempted to damage condominium associations have been deferred. Please defer this bill. It's a bad idea.

## **morikawa2 - Grant**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 19, 2012 11:03 AM  
**To:** HLTtestimony  
**Cc:** francis@1kalakaua.com  
**Subject:** Testimony for SB2295 on 3/20/2012 9:00:00 AM

Testimony for HLT 3/20/2012 9:00:00 AM SB2295

Conference room: 329  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Francis Goffredo  
Organization: One Kalakaua Realty  
E-mail: francis@1kalakaua.com  
Submitted on: 3/19/2012

**Comments:**

Ladies & Gentlemen,

My name is Francis Goffredo, Principal Broker of One Kalakaua Realty. I provide the following testimony in opposition to SB2295 SD1.

One Kalakaua Senior Living (OKSL) is the only full service, continuing care, fee simple retirement condominium on O'ahu that is also licensed by the State of Hawaii as an assisted living facility.

OKSL has been in operation since October 1997, and aside from numerous lawsuits and legal challenges regarding various operations at OKSL from an owner who was heavily fined and lost those lawsuits, which were deemed "frivolous" by presiding Judge, but which nevertheless cost the community millions of dollars, this individual continues to try to dismantle the present successful OKSL operation on the premise that our OKSL senior population is unhappy and being "taking advantage of" by management.

SB2295 SD1 would dismantle the basic mandatory health care programs that were implemented and began when the project was designed by the developer and his consultant/operator, Life Care Services Corp. from DeMoines, Iowa, considered the number one operator of continuing care retirement facilities across the nation.

Passing SB2295 SD1 can only diminish the existing benefits and services at OKSL and surely have an adverse effect on the existing operational costs.

I am against SB 2295 SD1 because it is "another" frivolous assault on OKSL to weaken its' basic original mission, namely to provide 24 hour a day health services and safety features in a supportive senior lifestyle for its' residents.

The community provides 3 basic mandatory services that can be classified as "assistance in living"; services that are paid for thru the AOA's maintenance fees:

- #1- 24 hour emergency response service to each condominium unit;
- #2- a daily status check on each condo to confirm that each resident is conscious and well each morning and;
- #3- the OKSL Wellness Programs of daily exercise classes and their in-house management.

These 3 services are paid proportionately by the entire condominium ownership thru their monthly maintenance fees. This system has been working flawlessly since October 1997 and continues to provide a successful and supportive lifestyle for the OKSL aging population which now averages over 85 years of age.

The 24 hour emergency response system, the daily status check system and Wellness Program and its' management should not be allowed to become elective services. They are too vital and necessary and must remain mandatory as the OKSL population relies on them daily.

These services have always been the most important advantages for seniors living at One Kalakaua. Immediate connectivity to a professional health care department of RN's, LPN's and CNA's at the press of a button are the core benefits to living at OKSL, as well as the health benefits of the Wellness Program and other "ala carte" assistance in living services that residents may contract for separately, outside of the AOA maintenance fees.

Full disclosure of all of these benefits, services and their monthly costs are provided to prospective residents prior to any sale or rental agreement. The demand for OKSL units is very high as the aging population of Hawaii continues to expand with the baby boomers. There are currently no units for sale at OKSL.

The premise of SB2295 SD1 is based on false information that the entire OKSL ownership are paying for personal assistance in living services that are individually contracted for by residents and that the vast majority of the residents are not in agreement with the basic core services and don't want them.

Nothing could be further from the truth. This is absolutely false and contrary to my 19 years of continuous work selling and renting units in the project. It is a joyful place and the vast majority of the OKSL population want and support these basic core services that are the foundation upon which the project was created. Take away these basic core services and what you have left is just another condominium.

One Kalakaua residents do not share the cost of personal assistance in living services received by individual residents who use the OKSL Resident Care Department.

Ala carte assistance in living services are billed and paid for monthly by the individual resident.

I have sold and managed units at OKSL since July 1993 and I know that seniors choose to live at OKSL specifically for health and safety reasons as they age in place. Their lives depend on the 24 hour emergency response system and daily status check system and are enhanced by the OKSL Wellness Program.

These primary core benefits, as well as other individual "ala carte" assistance in living services are what my clients and their families are looking for when they come to OKSL - safety, security and professional health care.

Before voting on SB 2295 SD1, I encourage you to investigate more thoroughly OKSL, its' management, its' assistance in living system, and most importantly, the satisfaction of its' residents. It is a first class operation that is working well and continues to improve with age and experience. With your help, it will continue to work well, remain self-governing, and benefit the Honolulu community for years to come.

I strongly urge you not to pass this bill.

Thank you for your attention and I am available for further testimony.

Francis Goffredo  
Principal Broker  
One Kalakaua Realty  
808-949-1111

March 18, 2012

*Testimony for Hearing before the  
Committee on Health  
House of Representatives  
State of Hawaii*

*Tuesday, March 20, 2012, 9:00 am  
Conference Room 329  
Hawaii State Capitol*

*Re: Strong Opposition to SB 2295 SD 1 Relating to Condominiums*

Chair Yamane, Vice Chair Morikawa and Committee Members,

Thank you for the opportunity to testify in **Strong Opposition to SB 2295 SD1**.

My name is Jeff Au. I am a practicing attorney and Managing Director & General Counsel of PacifiCap, Hawaii's largest locally based venture capital investment firm. Some of the high tech companies that our firm has invested in over the past decade have included companies who have developed technologies to improve and lower the costs of healthcare, including eldercare in particular.

Therefore, I have had the opportunity to learn about the healthcare, social, financial and other problems, as well as potential solutions, facing our kupuna as they age.

However, unlike some of my past testimonies before your committees, I am not here today for business reasons.

I am here for very personal reasons.

In 2001, my father was diagnosed with a rare form of sinus and brain cancer. After almost ten months of radiation and chemotherapy treatment on the mainland, his "expert" doctors gave up and told me that we would be lucky if he lived another six weeks.

While we were happy when my Dad recovered enough to fly home to Hawaii, our family faced a very serious dilemma. My Mom could not take care of him at home in his condition, but he was still very alert and aware of his surroundings. Lying in bed all day in a nursing home would have been an awful environment for him to spend his last days in, and it would have been an awful life for my Mom to have to just sit next to his nursing home bed for hours and hours each day. Possible nursing home costs of more than \$8,000 per month were also of serious concern.

One Kalakaua was the answer to our prayers. It has been a true blessing to our family. Because of its condo ownership structure, its costs are thousands of dollars less per month than a nursing home. Because it is a condo with "normal" apartments, my parents could live a normal life together where my Dad could get the care and support he needed from both my Mom and the One Kalakaua staff, when needed. Because assisted living services are provided by One Kalakaua's condo association on a nonprofit, break-even basis, with no profit margin needed for outside investors, these services can be provided to One Kalakaua's residents for thousands of dollars less per month than what is charged for similar services at other facilities. One Kalakaua residents also save a lot of money because **THEY ONLY HAVE TO PAY FOR ASSISTED LIVING SERVICES ON AN INCREMENTAL 15 MINUTE BASIS, AND THEY ONLY HAVE TO PAY FOR THESE SERVICES IF AND WHEN THEY NEED THEM.** This compares to other assisted living facilities in Hawaii that are not condominiums that charge residents a flat monthly fee of thousands of dollars more, whether the residents use such services or not.

Because of the excellent care, daily exercise, other activities and the warm and caring environment nurtured by One Kalakaua's staff and residents, my father lived another six years at One Kalakaua with no medication, very little pain, with an excellent quality of life considering his age and illness.

He was happy, felt cared for, secure and very much part of the One Kalakaua Ohana. Almost until the very end, my Dad continued to annoy my Mom with inappropriate jokes that he would tell to the One Kalakaua staff and other residents, and for more than six years, he was able to enjoy food that was better than my Mom's cooking.

When my Dad passed away at the end of 2008, I was very moved by the dozens of people from One Kalakaua who came to his services. I realized then how important One Kalakaua had become in both my Dad's and my Mom's lives and what a uniquely special place One Kalakaua really is.

Although my Mom thankfully continues to be in good health and does not need the assisted living services that my Dad required, I told her that she should continue to live at One Kalakaua because that's where her friends and extended Ohana are. Even though my Mom does not need medical or assisted living services, for me, the enjoyment, friendship, happiness, security and quality of life that my Mom enjoys from continuing to live at One Kalakaua are absolutely worth every penny of the costs, although **THESE COSTS ARE NOW MUCH LOWER SINCE WE NO LONGER HAVE TO PAY FOR THE ASSISTED LIVING SERVICES THAT MY DAD PREVIOUSLY REQUIRED.**

SB 2295 SD1 provides:

that any and all charges or assessments for health care services or services relating to personal care that may be offered or provided to unit owners or residents of unit owners at a condominium licensed as an assisted living facility, shall be made against only the

units occupied by persons who utilize such health care services and services relating to personal care, and shall not be included as part of the common expenses of the condominium.

One of the only two testifiers (other than DCCA) who submitted testimony in support of this bill before the Senate Committee on Commerce and Consumer Protection ("CPN") personally told me that she thinks that One Kalakaua is the only condominium in Hawaii licensed as an assisted living facility and therefore is the only facility to whom this legislation would apply.

**But residents of One Kalakaua are ALREADY only charged for assisted living services only when they use them, in 15 minute increments, on an as needed basis.**

Therefore, the primary purpose of this bill is to outlaw a perceived problem that does not exist.

I personally know the Committee Chair and other Senators who supported this bill in the Senate. I personally know them to be very caring and compassionate people, and I very much support their intent to protect elders from being charged for assisted living services that they neither need, use nor agreed to pay for.

I am therefore very concerned that Senate may have passed this bill based upon inaccurate and possibly misinformed and misleading facts that may have been provided to them.

It should also be noted for the record that the Senate Committee did not have the benefit of considering all of the facts and testimony in opposition to this bill that you are hearing today because opponents of this bill were not aware of its existence before the Senate hearing.

While people may be entitled to have their own personal opinions as to what good policy or laws might be, they are not entitled to have or make up their own facts. Therefore, if this bill were to move forward, it would be incumbent upon the Legislature to fully investigate whether this bill is fundamentally premised and based upon misinformed or misleading facts and if any legislators have been inadvertently, or even deliberately, misled, or to put bluntly, lied to.

While targeting a single institution with specific legislation is generally considered to be an inappropriate use of the legislative process, this bill also could create many very negative consequences, even if unintended, for not only One Kalakaua and its residents, but also many other parties statewide, including the State of Hawaii itself. The following are a few examples:

- **Overbroad and Vague:** This bill would prohibit "any and all charges or assessments for health care services or services relating to personal care" to be included in common expenses charged to all owners of a condominium. Such broad and vague language is an invitation to misunderstanding, disputes and potential litigation, whether now, or in the future. For example, "any and all" charges and assessments "relating to" health care or personal care services could be interpreted to include basic infrastructure and

common expenses that are customarily and necessarily shared as common expenses by virtually all condominiums. For example, one could make a very strong argument that basic plumbing and electrical infrastructure and costs are "charges or assessments" that are "relating to" (and are in fact essential to) the providing of health care and personal care services.

- **Inappropriate Specific Prohibitions:** This bill also is very specific in inappropriately prohibiting inclusion in common expenses items such as "housekeeping" and "transportation," which are allowed and included in common expenses for other condominiums. Prohibiting One Kalakaua from including such services in common expenses could create a very bad precedent for all other condominiums in the State of Hawaii. It also seems rather odd that this bill seeks to prohibit including in the common expenses of a condominium licensed as an assisted living facility the "maintenance of health records," which is essential for the health and safety of ALL residents of ANY assisted living facility. How can health records be maintained if their maintenance is not paid for, and even if a certain elderly resident believes that he or she does not need medical or assisted living services (in spite of having chosen to live in an assisted living facility), how can his or her health condition be professionally determined if that resident's health records are missing or not maintained, whether now or in the future?
- **Conflicts with Condominium Declaration; Unconstitutionality; Litigation Risk to the State:** Some of the health care and personal care services that this bill would prohibit from being included as common expenses are specifically included as allowed common expenses in One Kalakaua's Condominium Declaration that was approved by the State of Hawaii and recorded with the Bureau of Conveyances in 1995. For the State of Hawaii to retroactively reverse itself and prohibit such common expenses through a new law, almost two decades later, would violate both the federal and state constitutions and would likely expose the state to significant legal liability and litigation risks.
- **Potential Damage to All Condominium Owners and Hawaii's Real Estate Market:** If this bill should become law and results in protracted litigation brought against the State of Hawaii by owners of One Kalakaua, and possibly other condominium owners whose declarations could also be retroactively impacted, before this litigation is settled, the perceived risk to all owners and prospective buyers of condominiums in Hawaii that the Legislature could possibly retroactively and unconstitutionally pass and attempt to enforce new laws that retroactively prohibit and restrict rights that were previously approved and recorded in a condominium's declaration could create a chilling effect that depresses the demand for and values of all condominiums across our state. Local, national and even international press coverage of such legislation and litigation could further depress Hawaii's real estate market at the worst possible time, and it could even negatively impact our local financial institutions who hold loans secured by condominiums and other local real estate.



Testimony in  
Strong Opposition to SB 2295 SD1  
Committee on Health  
House of Representatives  
State of Hawaii  
March 20, 2012  
Page 5

Based upon our family's own experience, I personally believe that One Kalakaua is a very special and wonderful place. It has been a blessing to both my parents and has enabled them to enjoy very much what otherwise could have been the most difficult and miserable years of their lives.

But regardless of what I think personally, as a legal matter, there are only two possible scenarios for One Kalakaua. Either A) One Kalakaua is currently violating existing law; or B) One Kalakaua is not currently violating existing law, so existing law needs to be retroactively changed before one or more violations by One Kalakaua can be created.

With respect to Scenario A, if One Kalakaua is violating existing law, the appropriate venue to address such alleged violations would be the courts and not the Legislature. It should be noted for the record that One Kalakaua has already prevailed after several years of litigation over similar issues in a lawsuit that was brought by one of the two proponents of this bill who submitted testimony supporting it before the Senate CPN committee. As previously mentioned, it is inappropriate to attempt to use the legislative process to settle a private dispute that would only impact a single entity, and it would clearly be an inappropriate use of the legislative process to give a private individual possible further "bites at the apple" in attempts to re-litigate similar issues that already have been settled by the courts.

With respect to Scenario B, if One Kalakaua is not violating existing law, it clearly would be unfair and inappropriate for the Legislature to retroactively and unconstitutionally create a new law in order to artificially and retroactively create a violation.

Finally, you should be aware of the financial burdens and emotional stress that almost a decade of litigation and similar legislative efforts (going as far back as 2003) have imposed on the vast majority of the elderly residents of One Kalakaua. In addition to hundreds of thousands of dollars in legal fees already incurred, for many residents, these repeated, unwarranted, legally inappropriate disputes and controversies have been a dark cloud that have created almost a decade of unnecessary stress and anxiety that they clearly don't need at this stage of their lives.

I therefore respectfully request that you do your part to relieve them from this unnecessary stress and worry by voting against the passage of this bill.

Thank you for your consideration.

Respectfully submitted,

Jeffrey Au  
Managing Director & General Counsel  
PacifiCap

## **morikawa2 - Grant**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 18, 2012 2:14 PM  
**To:** HLTtestimony  
**Cc:** dwightc001@hawaii.rr.com  
**Subject:** Testimony for SB2295 on 3/20/2012 9:00:00 AM

Testimony for HLT 3/20/2012 9:00:00 AM SB2295

Conference room: 329  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Page R. Dwight  
Organization: Individual  
E-mail: [dwightc001@hawaii.rr.com](mailto:dwightc001@hawaii.rr.com)  
Submitted on: 3/18/2012

**Comments:**

My husband and I moved to One Kalakaua Senior Living because of the included wellness and exercise programs, weekly maid service, dining service, parties, entertainment, group outings etc. We live independently and use the amenities when we wish to. Assisted Living is available for a fee as is the second floor Skilled Nursing Facility. We've been here fourteen years and it's a great place to live.

**ALICE CLAY REALTOR, GRI**  
**1314 KALAKAUA AVE STE 1503**  
**HONOLULU, HAWAII 96826**  
alohaaclay@hawaii.rr.com  
**(808) 983-4514**

March 18, 2012

Hearing: Tuesday, 3/20/2012 9 a.m. House Conf Rm. #329

RE: TESTIMONY IN SUPPORT OF SB 2295 SDI, RE: CONDOMINIUMS

TO THE HONORABLE RYAN YAMANE, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Alice Clay and I am and have been a Realtor for some 37 years in Hawaii. As our population ages, the concerns we, as Realtors have in selling or advising our seniors client who are contemplating moving to a condominium that offers assisted living services, are growing, and there is a need for clarification in what is being offered to seniors. Our present laws do not clearly define the operation of an assisted living facility if operated in a condominium and SB 2295 SD1 explains, defines and clarifies what the care should be, what services are rendered and who is financially responsible for the operation of an Assisted Living Facility.

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## **morikawa2 - Grant**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 19, 2012 7:50 AM  
**To:** HLTtestimony  
**Cc:** rachel.nb@gmail.com  
**Subject:** Testimony for SB2295 on 3/20/2012 9:00:00 AM

Testimony for HLT 3/20/2012 9:00:00 AM SB2295

Conference room: 329  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Rachel Glanstein  
Organization: Individual  
E-mail: [rachel.nb@gmail.com](mailto:rachel.nb@gmail.com)  
Submitted on: 3/19/2012

**Comments:**

When you buy into a condominium association, they provide you with all the documents to read so you know what you are getting into. People moved into some of these condos that allow assisted living with the expectation that it would be there and they would be paying, regardless of use. It's just like people on the first floor of an apartment building saying they don't have to pay for the maintenance and upkeep of the elevator. It's a condominium association - you pay for everyone. If there's a pool and you don't use it, you still have to pay toward its maintenance. Again, that's part of being a condo owner. Please don't micromanage condos - please let them enforce their own rules. Mahalo.